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ABSTRACT

This report of a congressional hearing focuses on the Age Discrimination in Employment Act (ADEA), which permits forced retirement of American workers solely on the basis of age, that is, mandatory retirement at age 70. Testimony includes statements and prepared statements from a United States Representative, individuals who have been forced to retire at age 70 or who are facing mandatory retirement including a representative of the American Association of Retired Persons, individuals representing the Grumman Corporation and the United States Chamber of Commerce, and an age discrimination lawyer. An appendix contains relevant reports, additional statements, letters, and a proposed bill to amend the ADEA. (YLB)

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WORKING AMERICANS: EQUALITY AT ANY AGE

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

WASHINGTON, DC

JUNE 19, 1986

Serial No. 99-21

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WORKING AMERICANS: EQUALITY AT ANY AGE

THURSDAY, JUNE 19, 1986

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, DC.

The committee convened, pursuant to notice, at 9:37 a.m., in room SD-106, Hon. John Heinz (chairman) presiding.

Present: Senators Heinz, Grassley, Pressler, Chiles, Burdick, Glenn, Nickles, Hawkins, Warner, and Wilson.

Staff present: Stephen R. McConnell, staff director; Robin L. Kropf, chief clerk; Terri Kay Parker, general counsel; Brian W. Lindberg, professional staff; Isabelle Claxton, communications director; Sara White, assistant communications director; Diane Lifsey, minority staff director; Jane Jeter, minority professional staff; Kimberly Kasberg, hearing clerk; Diane Linskey, staff assistant; and Elaine Blatt, intern.

OPENING STATEMENT BY SENATOR JOHN HEINZ, CHAIRMAN

Chairman HEINZ. The committee will come to order.

Ladies and gentlemen, good morning. We welcome you to this hearing of the Senate Special Committee on Aging.

We are here today to address a Federal policy that really goes against the grain of our free enterprise system and undercuts the fundamental tenets of civil rights in this country. I am talking about the current Federal law permitting forced retirement of American workers solely on the basis of age.

Mandatory retirement at age 70, which is the law in this country today—or at least, it is permitted today under the law—like discrimination based upon race, religion or sex, contradicts the well-established principles of freedom of choice and job opportunity based on individual ability. But for at least 51 percent of the Nation's work force, mandatory retirement looms as an ominous shadow at the end of their careers.

Congress enacted the Age Discrimination in Employment Act, ADEA, to prohibit arbitrary age discrimination on the job and to promote employment based on ability rather than age. While the intent of the law is sound, it flounders on the provision which ends those Federal protections at age 70.

Today we are going to hear firsthand of the severe psychological and financial impact of forced retirement on thousands of human beings. This arbitrary policy will soon silence the strings of a concert violist and close the schoolbooks of a dedicated teacher, to name two.

Without public support under The Older Americans Act, the age 70 provision would have sentenced a productive, willing worker to years of financial hardship and social isolation.

Too often, early retirement, whether encouraged by an employer or by the lure of golf courses or exotic cruises, becomes a nightmare of unpaid bills and unfulfilled hours. The poverty rate among seniors who do not work is three times that of those who do. Social Security benefits for an average couple come to something less than $10,000 a year, and too many individuals over age 65 have no pension, no savings, or no insurance to supplement those Social Security benefits.

We will also hear from expert witnesses that the myth of the older worker as a less productive, less able, less reliable employee is just that: a myth. A recent survey of 400 businesses by the American Association of Retired Persons underscores a growing recognition that, in fact, older workers are productive, committed to quality, and invaluable for their knowledge and experience. Ninety percent of those surveyed stated that older workers are cost effective.

An overwhelming majority of Americans in a recent Louis Harris survey agreed that "nobody should be forced to retire because of age if be wants to continue working and is still able to do a good job."

Well, with both public opinion and many employers solidly in support of full job equality at all ages, I think it is time for Congress to act, and I think the burden is on Congress to act.

The Government will do more than remedy an unethical dilemma by changing the law. Official cost estimates show that eliminating mandatory retirement would result in savings of $30 million to Social Security and Medicare in 1991 and $100 million per year by the year 2020.

Last May, I introduced S. 1054, the Age Discrimination in Employment Amendments of 1985, to remove the maximum age limitation for employees covered by the ADEA. Similar legislation has been introduced by our first witness, Representative Claude Pepper, in the House of Representatives.

Elimination of mandatory retirement will not end age discrimination, but it will guarantee individual freedom of choice.

Historically, President Reagan and the administration have supported legislation to abolish mandatory retirement and eliminate the age cap for all personnel actions except hiring and promotion.

The Department of Labor, unfortunately, declined our invitation to testify today. I spoke personally with Secretary Brock. He had to be out of the country with a conflict. It does suggest to me, however, that the Department and the administration's position has not changed on their exceptions on hiring and promotion. I hope it will change, nonetheless, because I think that that position is not defensible, and I do hope and trust that they will reevaluate it in the light of today's hearing.

Let me just say in conclusion that there are other barriers to employment as we grow older that are not necessarily related to the law. Some are the negative attitudes of employers—some employers, at any rate—and that is not going to be easily legislated away. What is needed is education of employers, the development of cre-

ative second career and retraining programs, and once and for all, our best efforts to flatten the barriers blocking older workers from remaining vigorous and productive members of this Nation's economy. That is a job for all Americans, not just for the Congress.

Before I proceed any further, I would like to call on Senator Grassley for any opening statement he may have.

STATEMENT BY SENATOR CHARLES E. GRASSLEY

Senator GRASSLEY. First of all, Mr. Chairman, as a cosponsor of S. 1054, I commend you for holding this hearing. The real issue in regard to mandatory retirement is whether or not we are going to consider older Americans as individuals or whether we are going to consider them as part of a group. I believe strongly that people ought to be looked at as individuals.

We ought not to judge people, in the workplace or anywhere else, on the basis of whether they are black or white, male or female, old or young. That is why I reject the idea that just because someone has arrived at a certain age, he or she ought to be turned out to pasture.

There is more than enough empirical evidence to demonstrate that old age does not necessarily mean a decline in competence in the workplace. That myth, of course, has been exploded a long time ago, and it is time for the law of the land to conform to that reality.

In the vast majority of jobs, older workers can compete, and they can compete on an equal basis with younger workers. Rather than choosing some arbitrary age where we say the law against age discrimination in the workplace no longer applies, what we ought to do is say that if a person can do a job, he has a right to continue to do that job for as long as he wants to.

There are also compelling public policy reasons for eliminating mandatory retirement, and for encouraging people to remain in the workplace longer; if they desire to, they ought to have the freedom to keep working.

Demographers tell us that the population of the United States is growing older. We all agree with that. That is also true in the workforce, where the baby boom cohort is growing older, where the number of younger people entering the workforce is declining.

It would seem that if we want to maintain a sufficient workforce, we will need to change public policies that discourage people from working beyond what we have considered to be normal retirement age. And of course, it goes without saying that the longer a person works, the less the strain on Social Security and private pensions.

Finally, individuals may need to work because their economic situations dictate that they need the income from a job. And I feel that S. 1054, goes in the direction not only of being fair and giving people the freedoms that everybody else has, but it also solves a lot of social and economic problems that I foresee on the horizon in this country.

Thank you, Mr. Chairman.

Chairman HEINZ. The committee follows the "early bird rule", and the Chair believes that Senator Burdick was here first although the Chair himself was not here much before 9:30. So the

Chair apologizes if he has made any error, but he thinks that Senator Burdick and then Senator Pressler and then Senator Chiles arrived, in that order.

Senator Burdick.

STATEMENT BY SENATOR QUENTIN N. BURDICK

Senator BURDICK. Thank you, Mr. Chairman.

I am pleased that the Special Committee on Aging is investigating age equality for older Americans on the job.

I have to say the timing for this particular hearing is perfect. In fact, I am just one of more than a million Americans over 70 still in the work force. There has been a dramatic decrease in the past 20 years in the number of workers over the age of 65. The mandatory retirement rule is a big reason for that decline.

Since all workers not employed by the Federal Government must retire at age 70, this rule prohibits older Americans from earning their own livelihood and removes dedicated, enthusiastic employees from the work force.

Why should an individual who is productive, efficient, reliable at 70 be forced to retire overnight? There is no good reason. Older workers stay on the job longer than younger workers. They are cost effective, productive and knowledgeable. An arbitrary retirement age is a violation of basic human and civil rights. Discrimination should not occur at any age. A person is fit for retirement when job duties can no longer be performed, not when that person reaches his or her 70th birthday.

Medical evidence suggests mandatory retirement can damage physical, emotional and psychological health; it may shorten lifespan. A distinct majority of Americans disapprove of a mandatory retirement age.

Eliminating this rule would add about 200,000 people to our work force. More workers contribute to a stronger gross national product, and more money is contributed to the Social Security Program.

Our country was built on the right of self-determination, and this right must be preserved. The motto of the Age Discrimination in Employment Act is: "To promote individuals based on ability, not on age." It is a concern of mine that our laws comport with this motto.

I am looking forward to hearing from our panel of witnesses today.

Thank you, Mr. Chairman.

Chairman HEINZ. Senator Burdick, thank you very much.

Senator Pressler.

STATEMENT BY SENATOR LARRY PRESSLER

Senator PRESSLER. Thank you, Mr. Chairman.

I think this is a very appropriate hearing on the Age Discrimination in Employment Act, and I want to thank the committee staff for the fine background report they have prepared on mandatory retirement issues.

The so-called "graying of America" has already begun. However, the critical years when the "baby boomers" begin retirement still lie ahead of us.

With the current low birth rates, the number of younger employees will not be enough for our work force, very frankly. Therefore, I think it is very timely that we are examining the current status of mandatory retirement practices.

I also believe that amending the Age Discrimination in Employment Act may help to ease this transition to a more mature work force and prohibit discrimination.

In my State of South Dakota, over 13.5 percent of our population are senior citizens. Many of these individuals want to continue to work well after they reach mandatory retirement age. It is my view that if they choose to do so, and if they are performing well, they should have that option.

I might also say that South Dakotans live longer than most of the rest of the Nation, particularly South Dakota women. I do not know why that is, but maybe the chairman can explain it.

In closing, I would like to say that age discrimination is certainly something that we want to wipe out in America. However, it is important that we take a more indepth look at what is developing on mandatory retirement issues, because there are important arguments to be heard on both sides.

Also, Mr. Chairman, due to the fact that all four of my committees are meeting this morning, at this hour, and I have a markup on product liability, I would ask that I be allowed to submit questions to our witnesses for the record, if I believe it to be necessary.

Chairman HEINZ. Without objection, so ordered.

Senator Pressler, I would only make one observation, and that is that with the popularity that you have in the State of South Dakota, there is no doubt in my mind that you will be in the Senate as long as you want, and perhaps as you approach your more mature years, you will be able to give us firsthand the reasons why South Dakotans are outliving all the rest of us. Some of us may be in retirement by then—and it will be mandatory.

Senator PRESSLER. I may take early retirement. I am talking about people who choose to continue to work.

Senator BURDICK. There is a little question about that. After all, there is North Dakota too, you know.

Senator PRESSLER. North Dakotans live quite a while, too.

Chairman HEINZ. I sense quite a debate in the offing, so I am going to recognize Senator Chiles.

STATEMENT BY SENATOR LAWTON CHILES

Senator CHILES. It might well be that what is happening in the Dakotas is what happens in my State, Mr. Chairman, that those people that are living longer in the North are moving South. That gives the South an advantage.

Mr. Chairman, I do not think you could have a more timely subject for the Aging Committee to be working on than looking at this bill that would remove these age discrimination barriers.

I can remember well when this committee first began to look at this subject, or maybe we had looked before that, but in the seventies. At that time, our focus was based more on the fact that it was unfair to these older workers, that we ought to be doing something for them, and that we ought to be allowing them to stay in the

work force if they were able and wanted to do so. At that time, there was a great deal of resistance.

But it was interesting that in the hearings that we held there were some very interesting studies that sort of dismissed the myths that were out there. Myths indicating that older workers could not learn new skills; that older workers were more prone to be sick or absent from their work, and that older workers did not produce the quality of work of younger workers.

All of those myths were blown away by numerous employee witnesses who came in to testify. In many, many areas of work that older workers could and were trained and retrained for, they had a higher rate of productivity. Many times, they were allowed flexible work schedules. We found their productivity tended to be higher because of the experience they had, and their desire to keep those jobs.

So we blew those myths away, but still, you were doing this for the worker not the employer. That is now changing.

We are now considering this subject for the good of this country. We have to make this change. Not just for the older worker; we have to make this change for the country. The demographics are so clear. If you look at the number of 9- and 10- and 11-year-olds that are out there, and we know that those are the people who are going to be 19 and 20 and 21 and entering the work force in 10 years—and the numbers are simply not there.

As we go into this next century, we have to make a change. The administration needs to know that. Everyone else needs to know that. And certainly, this committee can help in bringing light on that subject.

This country normally responds only when there is an emergency. That is just something that is part of what happens, I guess, in a democracy. We tend to respond pretty well when there is an emergency. When we had an energy crisis, we began to respond in conserving energy and finding additional sources of energy and trying to take all kinds of steps to solve the problem. We did not take those steps until the crisis came upon us, and we are now dismantling them piece by piece, I hate to say, because it now appears that we do not have a crisis.

We are going into a crisis period now, we have to do something about allowing our graying work force to stay with us, determining how we are going to train and retrain them, determining how we are going to set up flexible work schedules or other things that accommodate being able to use that work force. And we should be doing it a little bit ahead of the curve; we would be so much better off to do so.

Mr. Chairman, I very seldom question your judgment on anything, but I would think that if you were bringing in an outside witness to speak on this subject, you would want to bring in someone who perhaps was an older person himself, perhaps by virtue of his age, would be able to speak to this committee on this issue.

Instead, I see that you have brought in someone who I am delighted to see come from my State, but who is not recognized at all because of his age; he is recognized because of his energy, recognized because of his determination, recognized because of his wit and his skill—but not his age.

So I do not want to fault you for that, because I think he will be a good witness for us, in spite of the fact that he is a little bit new on the block.

But we are delighted to have him here today.

[The prepared statement of Senator Chiles follows:]

Thank you Mr. Chairman. I think that is important that the committee has chosen to hold this hearing on the issue of age discrimination. The fastest growing segment of my State's population is, hands down, the 60 plus group. Some people try to cast that in a negative light, or see it as a liability for Florida. But I haven't seen it that way. I believe that competent investigation would show that to the extent there have been problems, those problems have been caused by the way our society has chosen to deal with a "greying workforce" not by the "greying workers" themselves.

All of us can cite examples, back in our States, of programs, both in the public and private sectors, that reflect the coming changes in the workforce. So far, these individual success stories have been the exception rather than the rule. But as the numbers change, so I expect will the practices. This may not be happening as fast as we would like, but the trends are there.

This whole problem of how our workforce is being dealt with by industry and commerce, reminds me of the way we have dealt with the "energy crisis". As long as we had an abundant supply of cheap energy in this country, and even in the world, we didn't deal realistically with conservation and the best use of our natural resources. But when the supply ran short, we came up with more energy efficient ways to deal with needs and demands. That shortage produced massive changes in our whole society.

Mr. Chairman, we are, I believe, about to go through that same kind of experience with another "natural resource", our workforce. You don't have to be terribly perceptive to figure it out! If you look at the census data from 1980, it is clear that just as we experience a great shortage of oil in the 1970's, we are going to experience a great shortage of young workers late in this decade.

The census data show that the eight, nine, ten, and eleven year olds who will be the eighteen, nineteen, twenty, and twenty-one year olds in the 1990 census are just not there. We have been at a negative replacement ratio for some years now and while there seems to be some change taking place in that area, change will come slowly. We no longer have a seemingly limitless supply of young workers. The handwriting is on the wall! I just wonder if we are going to do a better job of reading it this time!

Here in Congress, we are fond of comparing our country's capability to that of the Russians. Perhaps we should take some lessons from them in this crucial area. For while I don't believe that they have developed "State of the art" methods of dealing with this problem, they have certainly done a better job than we have. That was not a matter of choice. They too experienced a great shortage of young workers. When they came out of World War II, they had lost a tremendous percentage of their young people. But they did something we still haven't achieved, they developed the concept of "differential use of manpower". Simply put, that means matching up the skills, experience, and physical capabilities of the worker to different available jobs. Because we have always had a bountiful supply of young capable workers, we have never faced up to that task. I believe that if we are smart, we will now get on with taking the steps to accomplish that job.

For this to happen in a manner that will produce the maximum results in terms of our Nation's productivity, it will take leadership from the administration, the Congress, industry, and organized labor. I am ready to move in that direction. The clock is running. We need to get on with making the necessary changes in the system to accommodate the demographic changes that are already here. I think that this hearing is a good step forward. I commend the chairman for convening it, and I look forward to having the testimony of our witnesses.

Chairman HEINZ. Senator Chiles, that could not serve as a more fitting introduction to our first witness. I cannot resist noting that I had the pleasure, the luxury, and the privilege, of serving in the House with Claude Pepper. He and I served together from the beginning of the House Select Committee on Aging—which I think I can claim at least part fatherhood for having established; C.W. "Bill" Young and I offered the amendment in 1974 that created

that, and Congressman and Senator Pepper—because he has been both—and I served on the Health and Long-Term Care Subcommittee. He chaired that committee; I was his ranking minority member. And he has become a household word, and I have gone on to the Senate, where they said in my departing the House and going to the Senate improved the intelligence of both bodies.

It is a delight to welcome my good friend and your constituent, and the most knowledgeable man I know in this entire area, Congressman Claude Pepper.

Claude.

STATEMENT OF THE HONORABLE CLAUDE PEPPER, MEMBER OF CONGRESS, STATE OF FLORIDA

Mr. PEPPER. Thank you very much, Mr. Chairman and members of the committee, especially for your very kind words of introduction and comment. I'm pleased to see my distinguished colleague Mr. Chiles, with whom I have enjoyed a warm friendship for a long time and whose leadership in this cause is very meaningful to us in Florida. As you know, you and Senator Grassley and I served on the Select Committee on Aging together in the House, and Senator Burdick has been a dear friend and coworker of mine in this area for a long time. Also, Senator Pressler has come into large prominence in this field himself.

I am particularly grateful to you for the privilege of being here, and I want to commend this committee for having this hearing. I think we are on the verge of moving legislation into the stage of enactment in this area.

In the House, my bill, H.R. 4154, which is the counterpart of your bill, last evening was the subject of consideration by the subcommittee headed by Representative Martinez of California. He has discharged his subcommittee for the consideration of that bill, and it now goes to the full committee. And the full committee, or at least its chairman, Representative Hawkins of California, has promised me that he intends to report the bill out next week. So we hope if you do not act sooner, we can send you a comparable bill over here from the House next week.

Our bill like yours relates only to the removal of the cap. And I am glad, Mr. Chairman, that you and your colleagues have put it in the category of civil rights—the right of people to keep on working, earning a living and contributing to their country, and contributing to their own support as an alternative to the necessity of some kind of public support. I am glad you have put it into the category of an important civil right.

We already have on the statute books, of course, as you know, legislation forbidding discrimination with respect to employment on account of sex or race. You do not complain because you say that just because a woman is a woman, she is entitled to work, which might be in the occupancy of a job that somebody else might like to have. You give the woman and you give the racial minority the right to work, because it is an essential part of one's life and it makes a significant contribution to the country.

So what we are doing is simply making age irrelevant in respect to the right to keep a job or to get a job.

For example, we know very well, as George Bernard Shaw said, that some people are old at 17, and some are young at 70. Nature varies in respect to the individual, in relation to that individual's activity and capacity, mental and physical alertness. And for any government or any society to establish an irrefutable presumption of incompetency—solely on the basis of age—that is what it amounts to—mandatory retirement is an irrefutable presumption of incompetency—is unfair and should be illegal. People who are mandatorily retired are not incompetent, and at least they should not be the victims of mandatory retirement unless they are incompetent.

We are not, of course, in any way interfering with discharge or mandatory retirement of people for cause, for lack of competency, lack of responsibility, lack of punctuality, and the like; we simply say that without reason—because that is what it amounts to—if you have a mandatory retirement policy so that you irrefutably presume incompetency on the part of an older person, it is an instance where, without reason, you are discharging the person from the opportunity to make his or her livelihood and to contribute to his or her country.

You remember very well in 1978 when we legislated on the subject. At that time, if you worked for the Federal Government, you could be mandatorily retired at 70, no matter how competent you were, how faithful, how loyal, how punctual. Your employer could say, "You are 70. Out."

"Me? Why? Am I not doing all right? Am I not responsible, punctual?"

"You are 70."

"And when did that get to be a crime? You mean that you are just going to discharge me because I am 70? The Lord has blessed me with good health and the ability to do my job, and they say I am doing it well."

Well, of course, we know that that was a situation that we would not tolerate, so we changed the law. Today, if you are working for the Federal Government, except in a few cases—and we should minimize those—except in a few professions, you can be as old as Methuselah was supposed to have been, and they cannot mandatorily retire you just on account of age. And we moved over into the non-Federal field and of course fixed that retirement age at 70 instead of 65, as it has been. We said you cannot mandatorily retire a private worker, except in a few instances, who is below 70 years of age.

Now we are simply saying age is not going to be a relevant factor in the employment of an individual. Judge the individual by his or her competency, ability, strength, vitality, and durability, and the like.

Senator CHILES. Mr. Chairman, I do not want to interrupt the witness, but again, I want him to stay narrowly on the truth. He is using the word "we" changed the law. I think he was primarily responsible in 1978 for changing that law. Some of us had to go along, but I think it more should have been "I" changed the law rather than "we" changed the law.

I think he is being a little charitable there.

Mr. PEPPER. I thank the Senator.

You know, in addition to what I have said, I am finding a new dynamism on the part of older people. May I tell you of two or three experiences I had not long ago.

One evening I was in New York, participating in an International Conference on Aging, and our host in New York gave us a lovely dinner. It was my privilege to sit by one of the prominent bankers of New York at the dinner. We had a very pleasant conversation. A couple of weeks after that, I had a telephone call from this gentleman. He said he would like to come down and see me. I just thought he wanted to ask me to do something maybe, and I said, "Certainly, come along."

I met him, and I said, "Mr. So-and-So, I am glad to see you. Is there anything I can do for you?"

He said, "You will be surprised and maybe shocked at why I am here."

"Well," I said, "I will be glad to hear you."

He said, "You know, I am retiring from my bank very soon. I came to ask you what you thought I should do with the rest of my life."

Now, that was a man who had achieved what we would call eminent success. But he felt that he had yet a lot to do to make his life complete.

Shortly after that, I was with a couple down in Miami, and I thought this man was a young man, even much younger than he appeared to be. And I told him this story that I have just recited.

He turned to me and said, "You know, that is just about my case, too. I just retired as vice president at Chrysler Motor Co." That was another man who had achieved what we would call eminent success, and he was not satisfied. He wanted to do a lot more, while the Lord had given him the strength in life to do it.

I was at a reception here in Washington not long ago, and I got to talking to a man. He said, "I have five factories in Virginia. I wish I had time to tell you about my aging program, my program for the employment of the elderly."

Well, somebody interrupted, and I did not get to hear the rest of the story.

A few days ago a friend of mine with whom I play golf occasionally, who heads a big plant down in Texas, came by to see me, and he said, "You know, I know you are interested in the subject of the elderly. I want to tell you what I am doing. In the first place, I am going to send you some literature to show you the number of my older people who are staying with me, right on up as long as they want to."

And then he said, "I am fixing to build another factory, and I am not going to employ anybody but the elderly. They will work 4 hours a day, have good vacation periods and opportunities and the like."

So, I find more and more economic leaders of our country recognizing the right of people to keep on working and to keep on making a contribution.

As you have already said, and we know, when I was born in 1900, only 5 percent of the people were over 65 years of age. Now, 11 percent; and in less than 50 years, we know there will be almost 20 percent.

There was a poll not long ago by Lou Harris, and he reported that 9 out of 10 of the American people said there ought not to be mandatory retirement on account of age.

And then, John Kenneth Galbraith of Harvard wrote a magnificent article in 1985. I received about 1,000 letters commending that article against mandatory retirement by Dr. Galbraith, a great economist.[1]

So I think that the time has come for us now to declare the national policy that we are putting age in the same category as sex and race—irrelevant in respect to getting or keeping a job. I think that will send a message to the world that will indicate that we are constantly implementing and perfecting our democracy, expanding the enjoyment of civil and human rights for our people, a good example for the rest of the world.

Thank you very much, Mr. Chairman.

Chairman HEINZ. Chairman Pepper, thank you very much. We all know the leadership that you have given, not just to the House, but to all of us. Many of us, as I mentioned earlier, trained at your knee.

I have just one or two questions for you. I would be hardput to disagree with a thing that you said. But one issue that will be raised, I am sure, by some of the people who do not favor the exact kind of legislation you and I have introduced, is whether or not age discrimination in employment is an increasing problem for senior citizens.

A lot of people say we have made a lot of progress against discrimination; people are less discriminated against today than they were 20 or 40 years ago. That is probably true, but there is still plenty of racism and still too much discrimination based on ethnicity, and there is still, I would say, the legal appendixes, like the laws on the books, that we are trying to eliminate.

In terms of senior citizens, are they finding it worse, or is it easier?

Mr. PEPPER. Senator, I think you have put your hand on a sensitive subject. We have had before our committee numerous witnesses who have told about instances where there has been discrimination on account of age—mandatory retirement without justifiable reason to do so.

The elderly people especially, now that there are more of them who want to be more active than they were in the past, they do not want to run into this impediment of mandatory retirement, which can be used, as you know, by clever employers in a way to deny them the right to make a living. And in connection with that, I think we should open up, we could well provide maybe by statute, that every institution of educational character which receives Federal aid should allow elderly people without cost to them to go to school there, to take courses, either increasing their skills or giving them another skill that would enable them to turn to another activity. Naturally, if somebody just turned a bolt for 20 years or 40 years, they might not want to keep on doing that. But they could well learn to turn something else maybe. And we should offer them

[1] See appendix, p. 125.

the opportunity to develop a skill that they possess so they can do a little better, or turn to a new vocation, because they have acquired a new skill.

But you are right; it is a great impediment to the elderly if we do not clarify the national policy that you cannot discriminate on the irrelevant basis of age in respect to the vital opportunity for elderly people to make a living.

Chairman HEINZ. Claude, thank you.

Senator Burdick, do you have any questions for Mr. Pepper?

Senator BURDICK. Mr. Chairman, I would like to tell my old friend how glad I am to see him here today. You are exhibit No. 1 to the case. You have proved your ability, and you have asserted that right for everybody.

Where would we be today if our jurists had to retire at age 70?

Where would Britain be in the Battle of Britain without Winston Churchill?

We need the Winston Churchills, we need the Claude Peppers. We need their brains, we need their input.

I want to thank you very much for your testimony here today.

Mr. PEPPER. May I just say thank you, Senator, you are so right.

May I just say one other word? We have had advances, requests, on the part of Members of the House that they be permitted to offer amendments to our bill. And we have persuaded the chairman of the subcommittee to discharge his subcommittee so that there will be no amendments. And the chairman of the House Education and Labor Committee has said he will not bring the bill out if it is subjected to amendment.

So, we are proposing a clean bill. We will deal with the subject of exemptions later. There are subjects that should be considered in the field of exemptions, but some of them more, some of them less. But we are hoping that we can keep it a clean bill, and we will just declare it a national policy that you cannot discriminate on account of age against somebody who is vital of mind and body and capable of rendering continuing great services to the country.

Chairman HEINZ. Congressman Pepper, Chairman Pepper, Senator Pepper, Judge Pepper—all of them apply to you—we are deeply grateful to you for your leadership on this and so many issues.

Thank you very much.

Mr. PEPPER. Senator, I want to compliment you on all that you have done. It is a privilege to work with you.

Thank you.

Chairman HEINZ. Thank you.

[The prepared statement of Representative Pepper follows:]

NEWS
Select Committee on Aging
U.S. House of Representatives

CLAUDE PEPPER, Chairman
Subcommittee on Health and Long Term Care
300 New Jersey Ave., S.E., Room 715
Washington, D.C. 20515
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REMARKS OF THE HONORABLE CLAUDE PEPPER
HEARING ON MANDATORY RETIREMENT
SENATE SPECIAL COMMITTEE ON AGING
JUNE 19, 1986

GOOD MORNING. IT'S A PLEASURE TO BE HERE BEFORE THE SENATE SPECIAL COMMITTEE ON AGING AND ITS DISTINGUISHED CHAIRMAN, SENATOR JOHN HEINZ, TO DISCUSS THE ISSUE OF MANDATORY RETIREMENT.

MANDATORY RETIREMENT IS, FIRST AND FOREMOST, A CIVIL RIGHTS ISSUE. TO OUTLAW MANDATORY RETIREMENT WOULD BE TO GUARANTEE THE RIGHT TO WORK AND MAKE A LIVING IN AN HONORABLE WAY IN A FREE COUNTRY, AND TO ALLOW ECONOMIC REWARD TO THOSE WHO WANT TO WORK TO PROVIDE FOR THEIR OWN SECURITY AND SUSTENANCE.

WE DON'T ALLOW ANYBODY TO BE DENIED THE RIGHT TO MAKE A LIVING BECAUSE OF SEX, AS WE USED TO. WE DON'T ALLOW ANYBODY TO BE DENIED THE RIGHT TO MAKE A LIVING BECAUSE OF RACE, AS WE USED TO. WE HAVE SEEN THE IRRELEVANCE OF THESE TWO CHARACTERISTICS TO THE EMPLOYABILITY OF AN INDIVIDUAL. IT IS TIME WE RECOGNIZE THE IRRELEVANCE OF AGE AS A DETERMINANT OF COMPETENCE, VIGOR AND RELIABILITY.

ANOTHER FACTOR IS INVOLVED. THERE HAVE BEEN MAJOR DEMOGRAPHIC CHANGES THIS CENTURY.

IN 1900, ONLY 5 PERCENT OF POPULATION WAS OVER 65. NOW 11 PERCENT ARE IN THAT CATEGORY. IN LESS THAN 50 YEARS, ALMOST 20 PERCENT OF THE AMERICAN POPULATION WILL BE OVER 65 YEARS OF AGE.

INTERESTINGLY, THE FASTEST GROWING SEGMENT OF THE POPULATION IN THIS COUNTRY IS THE GROUP 85 AND OVER, OF WHICH I AM A MEMBER. TODAY IT IS NOTHING TO SEE PEOPLE FUNCTIONING WELL IN THEIR NINETIES. THE HOUSE AGING COMMITTEE HAD A HEARING A FEW YEARS AGO WHICH FEATURED 7 WITNESSES 100 YEARS OF AGE AND OVER. A LADY OF 100 WAS THE YOUNGEST. A FORMER RAILROAD LOCOMOTIVE FIREMAN, 112, WAS THE OLDEST. THEY WERE LUCID AND DELIGHTFUL, WITH MANY STORIES TO TELL.

ALL EVIDENCE SHOWS THAT AMERICANS ARE LIVING TO "A RIPE OLD AGE." ARE WE GOING TO HAVE TO PROVIDE MORE SUPPORT FOR THESE OLDER PEOPLE? OR CAN WE SOMEHOW ENABLE OLDER INDIVIDUALS TO SUPPORT THEMSELVES WHEN THEY ARE ABLE TO DO SO AND WISH TO DO SO? THAT, AND THE FACT THAT THE RIGHT TO WORK IS A FUNDAMENTAL RIGHT OF ALL AMERICANS, IS BASICALLY WHAT TODAY'S HEARING IS ABOUT.

YOU MAY RECALL THAT, BEFORE 1978, EMPLOYEES OF THE GOVERNMENT OF THE UNITED STATES, NO MATTER HOW HEALTHY AND TALENTED, HOW CONSCIENTIOUS AND RESPONSIBLE, COULD BE RETIRED AT THE AGE OF 70. WELL, WHAT HAD THAT INDIVIDUAL DONE WRONG? HE OR SHE WAS FORTUNATE ENOUGH TO LIVE TO THE AGE OF 70, AND YET THE LAW SAID THAT YOU COULD BE AND SHOULD BE MANDATORILY RETIRED AFTER REACHING THAT MILESTONE.

IN 1978, WE CHANGED ALL THAT. TODAY, IF YOU ARE ABLE TO PERFORM YOUR FEDERAL GOVERNMENT JOB UP TO STANDARDS, YOU CANNOT BE MANDATORILY RETIRED BECAUSE YOU HAVE REACHED THE AGE OF 70. THIS WAS A RESOUNDING VICTORY FOR FEDERAL EMPLOYEES. NOW WE WANT TO MOVE A STEP FURTHER.

AFTER REMOVING THE CAP FOR THOSE WORKING FOR THE U.S. GOVERNMENT, WE WANT TO TAKE THE RETIREMENT AGE CAP OFF THOSE WORKING IN PRIVATE ENTERPRISE. THAT IS WHAT MY BILL, H.R. 4154, AIMS TO DO.

NOT EVERY OLDER AMERICAN WANTS TO CONTINUE WORKING BEYOND THE AGE OF 70, BUT, AS THE MAIL RECEIVED BY MY SUBCOMMITTEE REVEALS, MANY DO. DEPARTMENT OF LABOR EXPERTS SAY THAT, IF H.R. 4154 WERE TO PASS, 195,000 PEOPLE WOULD PROBABLY BE ADDED TO OUR WORKFORCE BY THE YEAR 2000. THIS WOULD BRING SAVINGS OVER $3 MILLION IN INCREASED REVENUE FROM THEIR EARNINGS.

THERE IS STRONG SUPPORT FOR ELIMINATING MANDATORY RETIREMENT IN THE PUBLIC DOMAIN OF OPINION. A HARRIS POLL CONDUCTED IN 1981 REVEALED THAT 9 OUT OF 10 AMERICANS OPPOSED MANDATORY RETIREMENT ON ACCOUNT OF AGE.

IN 1985, THE DISTINGUISHED ECONOMIST, JOHN KENNETH GALBRAITH, WROTE AN ARTICLE ON MANDATORY RETIREMENT IN PARADE MAGAZINE. OUR SUBCOMMITTEE GOT SOME 1,000 LETTERS IN RESPONSE TO THAT ARTICLE, MOST OF THEM SUPPORTING THE CONCEPT AIRED THERE, THAT MANDATORY RETIREMENT ON ACCOUNT OF AGE SHOULD BE ABOLISHED.

EVERY NOW AND THEN, PEOPLE WILL ARGUE THAT BY ABOLISHING MANDATORY RETIREMENT, WE WILL BAR THE BENEFIT OF PROMOTION TO YOUNGER WORKERS. I ASKED MY STAFF TO INVESTIGATE THAT CHARGE. I AM TOLD THAT COMPETENTLY UNDERTAKEN STUDIES SHOW THAT, EVEN AT THE HIGHEST LEVEL, THE DELAY WOULD NOT BE BEYOND HALF A YEAR TO YOUNGER WORKERS, IF YOU ALLOW THE OLDER WORKERS TO REMAIN EMPLOYED. AND, AMONG LOWER-LEVEL WORKERS, THE DELAY WOULD NOT BE OVER 5 TO 10 WEEKS.

I MENTIONED THE MANY LETTERS RECEIVED IN RESPONSE TO JOHN KENNETH GALBRAITH'S FINE ARTICLE. I WOULD LIKE TO SHARE SOME STATEMENTS FROM THOSE LETTERS:

-- A CALIFORNIA RESIDENT WROTE, "I MYSELF AM 88 YEARS OLD AND AM STILL WORKING 2 DAYS A WEEK AT MY TRADE AS SHOE SALESMAN, WHICH I STARTED 55 YEARS AGO AND STILL LIKE IT. THERE SHOULD BE NO AGE LIMIT IN THIS MATTER. DO SOMETHING ABOUT IT, CLAUDE."

-- IN ANOTHER LETTER, A 64-YEAR-OLD WISCONSIN MAN FACING FORCED RETIREMENT WROTE, "I HAVE NO QUARREL WITH THOSE WHO WISH TO RETIRE AT 65, OR EVEN EARLIER IF THEY SO DESIRE. HOWEVER, I STRONGLY FEEL THOSE LIKE MYSELF SHOULD HAVE NOT ONLY THE LEGAL OPPORTUNITY, BUT ALSO SOME INCENTIVE TO CONTINUE ACTIVE EMPLOYMENT AS LONG AS WE DESIRE."

-- ANOTHER ELDERLY WOMAN WROTE, "OUR MIND AND BODY WORK TOGETHER IN MIRACULOUS WAYS AND IF WE CUT OFF THE ACTIVITIES OF ONE, WE CURTAIL THE OTHER."

-- AND ONE RESPONDENT WROTE SIMPLY, "WHEN A MAN RETIRES, HE EXPIRES."

YOU WOULD THINK THAT, IN THIS GREAT COUNTRY WHICH PRIDES ITSELF ON FREEDOM, THERE NEVER WOULD HAVE BEEN SUCH A DOCTRINE, AT LEAST ADMITTED WITHIN THE BOUNDS OF LEGALITY, TO TELL PEOPLE THAT BECAUSE THEY HAVE REACHED AN ARBITRARY AGE, BECAUSE THE LORD HAS BEEN GOOD TO THEM AND THEY HAVE REACHED A CREDITABLE OLD AGE, THEY HAVE TO QUIT WORK.

THIS IS A VERY SERIOUS MATTER. I BELIEVE THAT THERE IS GOING TO BE A RENAISSANCE OF SORTS AMONG THE RETIRED PEOPLE OF THIS COUNTRY, WHO WANT TO CONTINUE CONTRIBUTING TO SOCIETY. THEY DON'T WANT TO BE CAST OFF AND DENIED THE OPPORTUNITY TO KEEP MAKING SUCH CONTRIBUTIONS AS THEY WANT.

WOULD WE TAKE AWAY A JOB FROM A QUALIFIED BLACK PERSON SO WE COULD GIVE IT TO A WHITE PERSON? NO -- IT IS ILLEGAL AND IT IS MORALLY WRONG. WOULD WE TAKE AWAY A JOB FROM A QUALIFIED WOMAN SO WE COULD GIVE IT TO A MAN? NO -- IT IS ILLEGAL AND IT IS MORALLY WRONG. SO HOW IS IT POSSIBLE THAT WE ARE STILL DENYING EMPLOYMENT OPPORTUNITIES TO OLDER AMERICANS ONLY BECAUSE THEY REACH THE AGE OF 70? IT IS IMPERATIVE THAT WE PUT A STOP TO THIS. ATTAINING THE AGE OF 70 SHOULD BE CAUSE FOR CELEBRATION, NOT THE TIME FOR A PAT ON THE BACK AND A GOLD WATCH, AND A REQUEST TO STEP ASIDE.

WE ARE DEADLY SERIOUS ABOUT THIS COMPELLING NEED. THE HONORABLE CHAIRMAN OF THE HOUSE COMMITTEE ON EDUCATION AND LABOR, MY GOOD FRIEND, GUS HAWKINS, IS COMMITTED TO BRINGING THIS ISSUE AND MY BILL BEFORE THAT COMMITTEE. OUR BILL HAS THE COSPONSORSHIP OF ALMOST EVERY INFLUENTIAL MEMBER OF CONGRESS IN THE AGING AND LABOR FIELDS. WE HAVE EVERY REASON TO BELIEVE THAT THE BILL WILL RECEIVE FAVORABLE REVIEW FROM THE EDUCATION AND LABOR COMMITTEE.

I COMMEND THE SENATE AGING COMMITTEE FOR HOLDING THIS IMPORTANT HEARING AND I LOOK FORWARD TO WORKING TOGETHER TOWARD TO HELP AMERICA'S OLDER WORKERS. AGEISM IS AS ODIOUS AS RACISM AND SEXISM. AGE DISCRIMINATION MUST BE ABOLISHED, AND MANDATORY RETIREMENT ELIMINATED. THANK YOU VERY MUCH.

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[COMMITTEE PRINT]

ELIMINATING MANDATORY RETIREMENT

A REPORT

BY THE

CHAIRMAN

OF THE

SUBCOMMITTEE ON HEALTH AND LONG-TERM CARE

OF THE

SELECT COMMITTEE ON AGING
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

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-02 20

ELIMINATING MANDATORY RETIREMENT

QUESTIONS AND ANSWERS

What is mandatory retirement?

Mandatory retirement refers to the forced departure of an employee because that person has attained an age deemed, for whatever reason, to be the cut-off age for employment in that particular job. This age is determined either through statute or through court ruling.

What is the current age of mandatory retirement?

It varies according to the nature of the work, whether or not the profession is protected by the provisions of the Age Discrimination in Employment Act (ADEA), and whether the work is performed in the public or private sector.

Under current law, the ADEA protects private sector workers against mandatory retirement up to the age of 70. In 1978, mandatory retirement was eliminated altogether for Federal workers.

What percentage of American workers are subject to mandatory retirement laws?

An estimated 51 percent of older workers outside the Federal government face a mandatory retirement age of 70 or more. (As noted above, Federal government workers under the protection of the ADEA have no mandatory retirement age.)

Can you describe more fully the Age Discrimination in Employment Act (ADEA)?

The Age Discrimination in Employment Act, adopted in 1967, prohibits discrimination in employment because of age in such matters as hiring, job retention, compensation, and other terms, conditions or privileges of employment. The ADEA protects workers who are at least 40, but less than 70, years of age from discrimination on the basis of age by most employers of 20 or more persons (including State and local governments), employment agencies, and labor organizations that have 25 or more members. Most Federal employees and applicants who are at least 40 years old are also covered, but without an upper age limit.

The Act specifies that actions otherwise deemed unlawful may be permitted if they are based upon the following considerations:

(1) where age is a bona fide occupational qualification reasonably necessary to normal operations of a particular business;

(2) where differentiation is based on reasonable factors other than age (e.g., the use of physical examinations relating to minimum standards reasonably necessary for specific work to be performed on a job);

(3) to observe the terms of a bona fide seniority system or a bona fide employee benefit plan such as a retirement, pension, or insurance plan, with the qualification that no seniority system or benefit plan may require or permit the involuntary retirement of any individual who is covered by the ADEA; and

(4) where an employee is discharged or disciplined for good cause.

The Equal Employment Opportunity Commission (EEOC) is responsible for the administration and enforcement of the ADEA, except in the Federal sector where the Office of Personnel Management (OPM) is responsible.

What are some of the occupations which lie outside the protection of the ADEA?

Several groups of Federal employees, including foreign service officers, Central Intelligence Agency employees, law enforcement officers and firefighters, and air traffic controllers, do have various specific mandatory retirement ages, set forth in separate laws that remain in effect. In addition, 1978 amendments to the ADEA provided two exceptions with regard to mandatory retirements: certain bona fide executive or high-ranking policy-making employees in private industry may be compulsorily retired at age 65; and, until July 1, 1982, tenured faculty at institutions of higher education could be compulsorily retired at age 65. The 1978 amendments also extended protection against discrimination to U.S. citizens employed by U.S. employers abroad.

Are there other Federal laws which deal with age discrimination?

Yes, there is a separate Age Discrimination Act, P.L. 94-135, as amended, which generally prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

Isn't "retirement" itself a fairly new notion?

"Retirement" is an idea that barely existed in turn-of-the-century America. The average life expectancy in 1900 was 46.3 for men and 48.3 for women, and persons generally continued working until attaining those ages, which startle us today because they are so low.

In 1900, the average American male spent 3% of his lifetime in retirement. In 1980, he spent more than one fifth of his life with that status.

What is the reasoning behind the mandatory retirement age of 70, which currently holds for those private sector employees protected by the ADEA?

Before gaining an understanding of why 70 was selected, we must examine the evolution of the retirement age which preceded it, 65.

It appears this number had its roots in Germany, with the Old Age and Survivors Pension Act which Chancellor Otto Von Bismarck instituted in 1889. This legislation represented the first time a Federal Government in the western world assumed obligation for the financial support of its older citizens and raised the need to define "old age." Bismarck selected 65 at that time. Great Britain passed similar legislation in 1908, initially selecting the age of 70 but later reducing it to 65. Other nations followed Bismarck's lead and the United States followed suit in 1935 with its Social Security system. Today, the normal retirement age as defined by public policy varies greatly by country, as well as by sex and type of work.

The rationale behind Bismarck's selection of age 65 as the start of "old age" seems to have been a most arbitrary one. Actually, in 1889, Bismarck was 74 and was a very active and powerful chancellor of the German Empire.

Concerning the United States' choice of 65 for Social Security eligibility, former Secretary of Health, Education and Welfare Wilbur Cohen, who drafted the 1935 Act, wrote in 1957, "This brief account of how age 65 was selected in the . . . United States indicates that there was no scientific, social, or gerontological basis for the selection. Rather, it may be said that it was the general consensus that 65 was the most acceptable age."

Given increasing lifespans in the United States and the increasing annuities which accrue with time, American policymakers recently began questioning the age of 65 for retirement. When formulating the 1978 Amendments to the Age Discrimination in Employment Act, 70 was adopted as the mandatory retirement age for most non-Federal workers. It was as arbitrary as age 65 and was chosen as a compromise between those who wished to eliminate mandatory retirement altogether, and those who would have preferred a continuance of mandatory retirement at age 65.

How have lifespans changed in the past century?

The life expectancy at birth for Americans has improved dramatically over the last century. People born today have a life expectancy 26 years longer than those born in 1900.

In 1900, the average life expectancy for men and women was 47.3 years. By 1935, the year the Social Security eligibility age of 65 was adopted, that age had risen to 61.7. In 1981, the average life expectancy had reached 74.2. To many, these longer lifespans are an indication that perhaps mandatory retirement is an outmoded concept; many persons do enjoy healthy and productive years even beyond the average lifespans.

What is the status of State law regarding mandatory retirement?

This will be described in detail in a later section of the report. All of the States parallel the Federal government by banning mandatory retirement through age 70 for the State government workforce and local government employees. The laws apply also to private sector workers, but some State laws include exemptions for private sector employees depending on the firm's size. Thirteen States have laws which go beyond the Federal law by prohibiting age discrimination, including mandatory retirement, without an upper age limit. These are California, Florida, Georgia, Hawaii, Iowa, Maine, Massachusetts,

Montana (by court interpretation of age discrimination statutes), New Hampshire, New Jersey, New York, Tennessee, and Wisconsin. All but three of these States impose this ban on all employers.

In addition, Alaska, Nevada, New Mexico, North Carolina, North Dakota and Vermont have abolished mandatory retirement contingent upon court interpretation of age discrimination statutes.

What is the intent of Congressman Pepper's bill, H.R. 6154?

H.R. 6154 essentially guarantees that individuals employed in occupations currently covered under the Age Discrimination in Employment Act cannot be fired solely on the basis of age. The Pepper bill would not force anyone to continue working. Rather, it would simply permit those who desire to continue working and are competent enough to keep working to do so.

H.R. 6154 is a "clean bill," retaining all exemptions provided for in the 1978 ADEA Amendments. It does include an appropriate phase-in period for collective bargaining agreements negotiated prior to enactment of the bill. All such agreements negotiated after the enactment of this legislation would have to be in full compliance with its provisions.

If the Pepper bill were adopted, what would be the economic consequences?

This legislation would not cost the Government a penny. Instead, it is expected to contribute to the economic well-being of the nation. H.R. 6154 would generate an estimated $3 billion in the first year alone, because more than 195,000 older workers who would otherwise be retired would be contributing to their own economic support as well as to the Treasury and Social Security funds. As the Congress, faced with the terms of the Gramm-Rudman-Hollings deficit control act, looks for new revenue sources, it is hoped this bill will provide at least a partial solution.

REVIEW OF RECENT EVENTS

The 99th Congress shows evidence of continuing interest in the issue of older workers, in part because of concerns about balancing the budget and in part because of increasing interest in the philosophy that ageism is as unconscionable a form of discrimination as racism or sexism. Many feel that the elimination of mandatory retirement would contribute to the economic well-being of the United States, generating some $3 billion in the first year alone, because nearly 195,000 older workers who would otherwise be retired would be contributing to their own economic support, as well as to the Treasury and Social Security funds.

There are no less than 10 bills concerning mandatory retirement now pending in the House. Among these are Chairman Pepper's bill to remove the maximum age limitation applicable to employees who are protected under the ADEA (H.R. 6154); Aging Committee Chairman Edward R. Roybal's bill (H.R. 1710) to remove mandatory retirement ages for a broad range of civil servants, including U.S. Park Police, air traffic controllers, Federal Bureau of Investigation personnel and Department of Justice law enforcement personnel, Tax Court judges, and Foreign Service officers; Congressman Robert Matsui's bill (H.R. 1736) to eliminate the mandatory retirement age for Tax Court judges; Congressman Marvyn Dymally's bills (H.R. 3370, H.R. 3560, H.R. 3578 and H.R. 3592) to extend the mandatory retirement age of judges in District of Columbia courts to age 76 (from age 70); and Congressman Benjamin Gilman's measure (H.R. 3911) to raise the mandatory retirement age of law enforcement officers engaged in detention activities from 55 to 65 years.

The sole Senate bill on mandatory retirement was introduced by Senator Alan Cranston. This bill eliminates the upper age limitation (70 years of age) of the class of persons to whom the Age Discrimination in Employment Act applies. It would also prohibit any reinstatement of ADEA exemptions for tenured university faculty and eliminate the existing exemption for executives or high policy-making employees in private industry.

HISTORICAL OVERVIEW OF MANDATORY RETIREMENT

Forced retirement still persists, despite growing evidence that age is a poor indicator of job performance. According to the Department of Labor, a majority of all older non-federal workers in the United States face a mandatory retirement age. In most cases the mandatory retirement age is set at 70 since the federal Age Discrimination in

Employment Act (ADEA) protects workers against such practices until age 70.

Prior to 1978, most employers had established a mandatory retirement age of 65. This age had no special significance other than its coincidence with the age at which workers are entitled to their full Social Security benefits.

In 1978, the ADEA was amended to eliminate mandatory retirement for nearly all Federal workers and to increase to 70 the age at which non-Federal workers could be forcibly retired. The age of 70 was as arbitrary as age 65; and was agreed to as a compromise until the Labor Department was able to conduct a study of the impact of eliminating mandatory retirement altogether.

The 97th Congress showed renewed and vigorous interest in the issue of older workers, in part because of concerns about the financing problems of Social Security. During that session, 16 bills were introduced on the topic of mandatory retirement -- 11 in the House and five in the Senate. One of these was H.R. 6576, Congressman Pepper's proposal to remove the age 70 cap for private sector employees. This 1982 version of the legislation had the same thrust as Pepper's current bill to remove the mandatory retirement age (H.R. 6154), and enjoyed the support of 182 Members of the House before it died at the end of the session.

In subsequent years, increasing concern over rising deficits and lingering concern over the solvency of Social Security have generated strong bipartisan sentiment in favor of removing all obstacles to employment of older Americans. Such action is thought not only to be a way of improving conditions for older Americans, but for bolstering the coffers of the U.S. Treasury and the Social Security trust funds. During the 98th Congress, 16 pieces of legislation were introduced -- nine in the House and seven in the Senate.

More than seven years have passed since the 1978 Amendments to the ADEA. The Labor Department study mandated by those amendments was published in 1982, and supported the complete elimination of mandatory retirement, noting that this occurrence would result in a further increase in the labor force of approximately 200,000 elderly persons by the year 2000. While that might have seemed of marginal importance in the overall labor force, the study noted, the change would be of immeasurable benefit to those thousands of employees who want to remain employed. With that study, which stated that raising the permissible mandatory retirement age of 70 had no significant negative impact and that eliminating retirement would likewise cause no major problems. The way appeared cleared for Congress to remove the most visible symbol of age discrimination in the workplace.

STATES THAT HAVE ELIMINATED MANDATORY RETIREMENT

To date, thirteen States have enacted statutes specifically banning mandatory retirement for public and private sector employees (with exceptions). These States are California, Florida, Georgia, Hawaii, Iowa, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New York, Tennessee and Wisconsin. All but three of these States impose this ban on all employers. In addition, Alaska, Nevada, New Mexico, North Carolina, North Dakota and Vermont have abolished mandatory retirement contingent upon court interpretation of age discrimination statutes.

Nineteen other States have age discrimination laws that protect employees' right to work until age 70. These are Arizona, Delaware, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Nebraska, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Washington, and West Virginia. However, 10 of these have a lower mandatory retirement age for public sector employees.

Five other States that have a mandatory retirement policy for public employees have an uncapped age discrimination protection statute for the private sector. They are Arizona, Colorado, Connecticut, Maryland and Michigan.

TABLE I
STATE MANDATORY RETIREMENT LAWS, 1986

	Public Sector			Private Sector					
	Prohibits Mandatory Retirement	Prohibits Mandatory Retirement Except for Certain Employees	Permits Mandatory Retirement Below Age 70	Prohibits Mandatory Retirement	Prohibits Mandatory Retirement Except for Certain Employees	Permits Mandatory Retirement Below Age 70	Prohibits Mandatory Retirement Except for Certain Employees	Permits Mandatory Retirement Below Age 70	Age Limit, if Any
Alabama	--	--	70*	--	--	--	--	--	None
Alaska	--	--	--	--	--	--	--	--	None
Arizona	--	--	70	--	--	--	Yes	--	None
Arkansas	--	--	70	--	--	--	Yes	--	70
California	Yes	1	--	Yes	--	--	Yes	--	None
Colorado	--	--	70*	--	--	--	Yes[2]	--	None
Connecticut	--	--	70*	--	--	--	Yes	--	None
Delaware	--	--	70*	--	--	--	Yes	--	70
Florida	Yes	2	--	Yes	--	--	Yes[2]	--	None
Georgia	Yes*	1	--	--	--	--	Yes	--	70
Hawaii	Yes	--	--	Yes	--	--	Yes	--	None
Idaho	--	5	--	--	--	--	Yes	--	70
Illinois	--	5	--	--	--	--	Yes	--	70
Indiana	--	5	--	--	--	--	Yes	--	70
Iowa	Yes	--	--	--	--	--	--	--	Yes
Kansas	--	--	--	--	--	--	Yes	--	70
Kentucky	--	--	65	--	--	--	Yes	--	70
Louisiana	--	--	70*	--	--	--	Yes	--	70
Maine	Yes	--	--	Yes	--	--	Yes	--	None
Maryland	--	--	70	--	--	--	Yes	--	None
Massachusetts	Yes	--	--	Yes	--	--	Yes	--	None
Michigan	--	--	70*	--	--	--	Yes	--	None
Minnesota	--	--	70*	--	--	--	Yes	--	None
Mississippi	--	--	70*	--	--	[3]	Yes	--	70
Missouri	--	--	70***	--	--	--	--	--	None
Montana	****	--	****	--	--	--	--	--	None
Nebraska	--	--	70	--	--	--	Yes	--	70
Nevada	--	--	--	--	--	--	Yes	--	None
New Hampshire	Yes	--	--	Yes	--	--	Yes	--	None
New Jersey	Yes	--	--	Yes	--	--	Yes	--	None
New Mexico	--	--	--	--	--	--	Yes[5]	--	None
New York	Yes	1	--	Yes	--	--	Yes[5]	--	None
North Carolina	--	--	--	--	--	--	Yes	--	None
North Dakota	--	--	--	--	--	--	Yes	--	None
Ohio	--	--	70	--	--	--	Yes	--	70
Oklahoma	--	3	--	--	--	--	--	--	None
Oregon	--	--	70	--	4	--	--	--	70
Pennsylvania	--	--	--	--	--	--	Yes	--	None
Rhode Island	--	--	70	--	--	--	Yes	--	70
South Carolina	--	--	70*	--	--	--	Yes	--	70
South Dakota	--	--	--	--	--	--	Yes[5]	--	70
Tennessee	Yes	3	--	--	--	--	Yes	--	70
Texas	--	5	--	--	--	--	Yes	--	70
Utah	--	--	--	--	--	--	Yes	--	70
Vermont	--	--	--	--	--	--	Yes	--	None
Virginia	--	--	70*	--	--	--	--	--	None
Washington	--	4	--	--	--	--	Yes	--	70
West Virginia	--	--	70*	--	--	--	Yes	--	65
Wisconsin	Yes	--	--	Yes	--	--	Yes	--	None
Wyoming	--	--	65*	--	--	--	--	--	None

NOTABLE EXCEPTIONS:

1 Lower for certain public safety personnel (firefighters, police and other law enforcement personnel.
2 Protects State employees only to age 65.
3 Has a variety of exceptions.
4 70 is the earliest compulsory retirement age that can be set.
5 No general mandatory retirement, but has for specific classes of workers.

*Operates lower age for certain public safety personnel.
**Municipalities may set a mandatory retirement age.
***A variety of ages, depending on municipality size.
****The State Supreme Court has interpreted age discrimination statutes to prohibit mandatory retirement.
*****In some States, the courts could decide that State age discrimination statutes prohibit mandatory retirement.

aOnly in State employment.
Certain broad exemptions.

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NUMBER OF WORKERS AFFECTED BY MANDATORY RETIREMENT

Labor Department data indicate that 51 percent of workers age 60 to 69 face a retirement age, usually 70. Thus, more than 20 million workers could be forced to retire simply because of their age. Most of these workers, however, will leave the labor force before they reach the mandatory retirement age, which means that many fewer workers are actually affected by such policies. If mandatory retirement were abolished, according to the most recent Labor Department statistics available, an estimated 675,000 more older men (the estimated work made of the number of workers) would be in the labor force in the years 2000 than if mandatory retirement policies remained as they are today.

Mandatory retirement policies are implemented at the whim of employers and tend to be most prevalent among larger firms. A 1981 study of 1,600 firms by Portland State University found that only 7 percent of small firms (20-49 employees) had a mandatory retirement age, compared to 68 percent of large firms (500 or more employees).

A 1976 survey of 363 companies by The Conference Board, an economic and management research organization, confirmed this finding. According to the results of that survey, although mandatory retirement has been rescinded entirely in many large companies, it is still more prevalent among the largest firms (those with 25,000 or more employees), where 79 percent of the companies had mandatory retirement.

The Conference Board report revealed that three-fifths of companies surveyed have mandatory retirement at age 70, but that 40 percent of these respondents indicated that there were exceptions to this policy. The exceptions fell mainly into two categories: (1) employees who live in states that have eliminated mandatory retirement entirely, and (2) mandatory retirement was at age 65 for those high-level executives with pension benefits of at least $44,000 annually. (The 1978 Amendments to the Age Discrimination in Employment Act permit mandatory retirement at age 65 for that small number of employees.)

Interestingly, while the survey revealed that the vast majority of corporations reportedly continue to encourage early retirement, the decline in labor-force participation rates of people aged 60 or more has slowed considerably in recent years, from a drop of three-tenths of a percentage point annually between 1970 and 1975 to a decline of only one-tenth of a percentage point annually between 1975 and 1980. This slowdown occurred after a dramatic quantitative decline in such participation.

The presence of a mandatory retirement policy contributes indirectly to earlier retirement even before age 70. The Labor Department found that workers with no mandatory retirement age planned to retire on average at age 64, compared to age 62 for those with a mandatory retirement age. Thus, the presence of a mandatory retirement policy may provide a signal to older workers that they should shorten their worklives. Another explanation for the early retirement tendency among workers facing mandatory retirement is that larger firms are more likely to have both mandatory retirement and better pension plans with lucrative early retirement inducements.

Evidently few older workers are actually involuntarily retired because financial disincentives, poor health or societal expectations cause most workers to retire early, that is, before age 65. For example, 70 percent of all new Social Security beneficiaries leave the labor force and begin collecting their benefits before age 65. Additionally, the most comprehensive study on mandatory retirement found that only 6 percent of older workers had been involuntarily retired after age 65.

PUBLIC ATTITUDES ABOUT MANDATORY RETIREMENT

According to a 1981 Harris poll, nine out of 10 Americans agreed that "nobody should be forced to retire because of age. If he/she wants to continue working and is still able to do a good job." A check of the literature by the Subcommittee reveals that opposition against mandatory retirement remains strong and it is not limited only to older people. Americans of all ages are equally likely to oppose such discriminatory policies.

On February 10, 1985, renowned economist John Kenneth Galbraith addressed the issue of mandatory retirement in an article entitled, "When Work Isn't Work," in Parade magazine. In his piece, Mr. Galbraith made several important points:

(1) There is no fixed limit on the number of employable men and women in the economy;

(2) We should not accept the common assumption that retirement is necessary to

(3) Nothing is more certain than that the disabilities of age come with great irregularity as between different individuals; and therefore

(4) A set retirement age is really a way of avoiding difficult individual judgments by imposing a harsh and arbitrary rule on all.

Mr. Galbraith also looked at different kinds of work: "real work," or the "hard, tedious, physically or mentally debilitating thing" and "enjoyed work," or "that kind of activity one would willingly do without pay," and "that is meaningful and personally self-fulfilling."

For our really important jobs, including those of legislators, judges, high-level business executives, and the President of the United States, Galbraith notes, we reject the idea of a fixed retirement. The same is true for artists, scientists, other scholars, and politicians. Yet, those who perform "real work" -- picking fruits and vegetables, cleaning streets, staffing a sweatshop, for example -- should be given the reward for real work, which is the opportunity to retire at a relatively early age, "almost certainly by the late 50s," Galbraith posited.

In response to Galbraith's article, Congressman Claude Pepper, Chairman of the Subcommittee on Health and Long-Term Care, the address of which was listed at its conclusion, was deluged with mail. The nearly 1,000 letters from all over the country revealed a spectrum of experiences with retirement, and many letters from persons nowhere near retirement age, who merely wanted to share their views. Most, however, were from older Americans who either had already retired or were anticipating retirement in the near future.

The overwhelming majority of these letters favored the elimination of mandatory retirement. The quotations below, reflections on the effects of retirement upon the individual, are culled from that mail:

- "Workers should not be forced to retire because of age, but that each individual who has the mental and physical capacities should be allowed to participate in the work force with honor and dignity," wrote a student of social welfare at New Orleans' Southern University.

- A young woman from Alexandria, Virginia, wrote, "I am just out of law school and very far from thinking seriously about retirement. But Professor Galbraith's article is so disconcerting that it prompted me to write this, my first letter to a Congressman. I think his ideas are very sound and deserve your Committee's immediate and active attention."

- One gentleman wanted Congressman Pepper to know, "The young may be our greatest national resource, but the senior members of our society are the foundation. From their experiences comes (sic) real wisdom."

- "I believe that we should not have a set retirement age. Many of the older people in our country still have so much they can give and want to give. We should encourage them with open arms anyone who wants to work for as long as he/she can and is able," contributed a Greenville, South Carolina woman.

- A woman who is a psychiatrist in Jackson, Mississippi, wrote, "With a healthy aging population, serious financial problems with social security and Medicare reimbursement, it seems to me that enforced retirement is positively ridiculous, and that retirement should be based, as he (Galbraith) points out, on productivity and the personal satisfactions associated with work, as well as the likelihood of relative productivity based on these factors as aging occurs."

- A writer from Virginia had this enthusiastic message: "On behalf of my 84 year old mother and myself, I wish to voice our opinions in response to Parade magazine article on February 10, 1985. Please add our votes to the affirmative on Prof. Galbraith's recommendations. Yea! Yea! Yea!"

Even as mail received by the Subcommittee showed strong opposition to the concept of mandatory retirement, it is also true that an ever-increasing number of employers share that sentiment.

In a 1981 nationwide survey of employer attitudes, 51% of employers agreed that "mandatory retirement should be abolished by the end of this decade." Since that time,

... Scruggs, states, "The graying of America means that employers who wish to keep their workforce expanding will have to employ older workers, because there will not be enough younger workers to go around. So it is in the best interest of the business community to begin now to find ways to utilize older workers. They can be valuable partners in working toward your company's objectives, from short-term crisis management to long-term strategic planning."

More and more employers are taking note of the experience, skills, reliability and flexibility that older workers bring to a position, as the following examples illustrate:

- A Lockheed Corporation branch office in California needed experienced workers to fill selected job slots, but was unable to get the ones they needed due to an acute labor shortage. They surveyed 4,000 of their recent retirees and found that more than 25% wanted to return to work. After instituting a crash hiring program to utilize these valuable workers, this company is now looking into rehiring retired engineers to alleviate a similar labor shortage.

- Wave III, a New York-based corporation, grew weary of training computer programmers, only to have them accept a better job somewhere else. By training older persons (the first training class had an average age of 46), the company now has a reliable pool of programmers with wide flexibility of workload and hours. The program will soon be expanded.

- John Deere Company considers its older workers such a valuable resource that it permits them to work 20-80% of the full-time work week, and to draw on a portion of their pension benefits to make up the difference in salary.

- The Travelers Insurance Companies of Hartford, Connecticut, created its own job bank for retired employees, listing the temporary positions available with the company. Employees can work almost half-time with no loss in their retirement income from the company.

- Continental Bank hired nearly 100 older persons to work in a check processing center where they previously had been plagued by a very high employee turnover rate in 24-hour-a-day work environment. Since then, supervisors in other divisions have requested the placement of older workers in their units, because the seniors provide good role models and they have stabilized the round-the-clock work force.

Although the above examples point to solutions to the problem of forced retirement, and are a testimonial to the value of older workers, they should by no means be seen as the only solution. As former U.S. Senator Charles H. Percy of Illinois observed in 1982, there are several aspects to permitting all persons of all ages to continue working and feeling useful:

> Our goal is to insure that any person who wants to work is not denied that opportunity because of his or her age. To reach this goal we must adopt a comprehensive approach designed to promote opportunities for older workers. Ending mandatory retirement is the logical place to begin. It will signal our intention to eliminate all barriers to the full participation of older workers. Employment should and must be an option for all ages.

THE IMPACT OF MANDATORY RETIREMENT ON THE INDIVIDUAL

Starvation and loss, the two most devastating type of life adjustments, are ... those for which the American individual receives the least preparation. Forced ... suddenly an older resource, the average person is not adequately prepared to ... creative response to forced changes in his or her lifestyle. Mandatory retirement is the forced termination of an individual's role, and represents the loss not only of that ... but of responsibles, purpose, and income.

Although some workers look forward to retirement, the majority do not, especially ... who still need a regular income. For these people, many with work histories of 40 ... years, retirement is deemed one of the 8 most stressful life events.

For those elderly who desire to work, unemployment creates serious problems. ... workers who lose their jobs stay unemployed longer than younger workers, suffer a ... greater earnings loss, and are more likely to give up looking for another job than those in

Recent American studies show that the individual benefits more from activity, both physical and mental, than inactivity, and from useful work more than empty leisure. A survey performed several years ago established that work contributes to a sense of physical and material well-being, giving workers a feeling of usefulness.

Mandatory retirement costs the United States very much. Besides being a drag on the economy, removing from the workforce persons who could be contributing to their own economic support as well as to the U.S. Treasury and to Social Security funds, it wastes human potential. The quotations below are again taken from mail received by the Subcommittee on Health and Long-Term Care in response to a Parade magazine article by John Kenneth Galbraith, published February 10, 1985.

The Economic Effects of Retirement:

- A senior citizen from Houston, Texas, wrote, "In my case it is absolutely necessary that I continue to earn until age 78. I began to earn my living at 56 and must continue to 78 to have enough money for the rest of my life expenses. It would relieve me greatly if I could know that I didn't have to scrounge for work after forced retirement in 1986 from the University of Texas where I now work."

- "I have no quarrel with those who wish to retire at 65, or even earlier if they so desire. However, I strongly feel those like myself should have not only the legal opportunity, but also some incentive to continue active employment as long as we desire." The author is a 66-year-old man from Neenah, Wisconsin.

The Emotional Effects of Retirement:

- A man from Palos Verdes Estates, California, told of the pleasure he derived from work. "I am 69 years old and I have a good job as an aerospace engineer which I enjoy. I believe I am making a useful contribution to our society. I don't want to retire at 70."

- An 82-year-old woman who works as a social secretary for two New York City women writes, "Mr. Galbraith is right -- a person should not stop working as long as God gives him or her good health. It does keep one young to have something to do."

- A 46-year-old man from Lompoc, California, relates the different roles work plays in people's lives, and the value of a meaningful vacation. "I am a 46 year old ironworker that has suffered numerous physical injuries over the past 25 years but I must endure 21 more years to qualify for my union's pension and social security. By contrast, an acquaintance of mine is an 80 year old engineer who was forced to leave his job 15 years ago. Another company was waiting in the wings to tap his reservoir of experience and he is still very actively working for them. If he were forced to shut down his mind even now, much less at 65, it would be his death warrant."

- Another California resident writes, "I think the government should consider this (the Galbraith article). I myself am 88 years old and am still working 2 days at my trade as shoe salesman, which started 55 years ago and still like it. There should be no age limit in this matter." From a personal message to Congressman Pepper, "Do something about it, Claude!!!"

The Physical Effects of Retirement:

- "Our mind and body work together in miraculous ways and if we cut off the activities of one, we curtail the other," contributed a 57-year-old Louisiana woman.

- One respondent contributed a short phrase packed with meaning: "When a man retires, he expires."

- A 31-year-old Oregon woman told the moving story of her grandmother, who was forced to retire at age 65. By the age of 75, she had undergone extensive treatment for a ten-year illness for which physicians can find no physical cause. The granddaughter observed, "This woman, had she not been cast aside from the stream of productivity into an unwanted life of leisure, would have had much to offer her world."

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THE IMPACT OF UNCAPPING THE ADEA

On older workers

Uncapping the Age Discrimination in Employment Act (ADEA) would add approximately 840,000 workers age 70 and over to the 28 million workers (aged 40-70) now covered by the Act. This would be a three percent increase in the number of individuals protected against age discrimination in employment.

Of course, not all persons whom the law would permit to enter or remain in the workforce would choose to do so. According to Labor Department statistics, eliminating mandatory retirement would result in 195,100 more older men in the labor force by the end of the decade. Almost half (90,300) would be in the 68-70 age group. Thus, eliminating mandatory retirement has an effect on workers who have not yet reached the compulsory retirement age.

On the economy

Increasing the labor force participation rates of older workers would have a beneficial effect on the economy, Social Security and government revenues. According to a 1980 study by Mercer-Hettinger, an actuarial firm, approximately $800 million is generated in savings for every 50,000 older workers retained in the workforce. It follows, then, that over $3 billion in revenue would be gained by the elimination of mandatory retirement.

On business

The Labor Department's studies indicate that business adapted quite easily to the 1978 ADEA amendments raising the permissible mandatory retirement age from 65 to 70. These same studies conclude that eliminating mandatory retirement altogether would have no greater impact on people remaining in the workforce than raising the age to 70. More importantly, many employers believe costs are lower for older workers. One third of older workers in larger firms have employers who believe costs will decrease if older workers remain on the job.

On women, minorities and youth

The Labor Department found that the rise in permissible mandatory retirement age to 70 resulted in only negligible effects on women, minorities and youth, and that abolishing mandatory retirement would have a similarly minimal impact. According to the Labor Department, "The estimated additional number of comparable age-65 workers as potential competition for less than one-quarter of one percent of all full-time workers ages 16-19; less than one-half of one percent of all full-time black workers ages 16-59; and around one-tenth of one percent of all full-time female workers ages 16-59."

On opportunities for promotion

Again, the Labor Department studies refute the idea that an increased number of older workers would significantly delay promotions for younger workers. One study reports that a two percent increase in the labor force participation rates of men age 65+ (twice the projected impact of eliminating mandatory retirement) would delay, on average, promotions at the highest ranks by only one-half year, while at the lower ranks individual promotions would be retarded by approximately five to ten weeks. These are insignificant effects, especially when weighed against the harmful consequences of forced retirement based on age.

SUMMARY

Under current law, mandatory retirement policies apply to more than half of America's older labor force. Public opinion is clearly opposed to such policies, 12 States have already abolished mandatory retirement, a significant percentage of prominent American companies have no mandatory retirement age, and there is growing bipartisan support in Congress to enact legislation ending age bias in the workplace.

Mandatory retirement has been shown to have devastating effects on individuals' mental and physical health, and spells severe economic loss for many older people who cannot afford retirement. Abolishing mandatory retirement would increase the labor force by 195,100 by the year 2000, would add needed revenue to the U.S. Treasury and to Social Security, would not adversely affect business, and would create no significant additional hardship for younger workers, women or minorities.

Many experts consider the removal of the upper age limit of 70 from the ADEA the most effective way to abolish mandatory retirement. This action, which could be accomplished with passage of Congressman Claude Pepper's bill, H.R. 6156, would stamp out once and for all the fires of age discrimination. Such an action would offer a new hope to older workers who are desperate to maintain their independence and dignity. Evidence from many sources points to the need to act swiftly to eradicate the remaining vestiges of age bias in the workplace. Just as race and sex are no indicators of competence or employability, so should age never be used as a determinant of one's worth.

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APPENDIX

CONGRESSMAN PEPPER'S BILL TO ELIMINATE MANDATORY RETIREMENT

99TH CONGRESS
1ST SESSION

H. R. 4154

To amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 1985

Mr. PEPPER (for himself, Mr. EDWARDS, Mr. JEFFORDS, Mr. KASTENMEIER, Mr. CONYERS, Mr. BARNES, Mr. EDGAR, Mr. BLAZE, Mr. DOWNEY, Mr. BOUCHER, Mr. TAUKE, and Mr. WALGREN) introduced the following bill; which was referred to the Committee on Education and Labor

---

A BILL

To amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Age Discrimination in Employment Amendments of 1985".

SEC. 2. AMENDMENTS TO ACT.

(a) COVERAGE UNDER GROUP HEALTH PLANS.—Subsection (g)(1) of section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(g)(1)), as added by section 116(a) of the Tax Equity and Fiscal Responsibility Act of 1982, is amended by striking out "through 69" each place it appears and inserting in lieu thereof "or older".

(b) TECHNICAL AMENDMENT.—Subsection (g) of the Age Discrimination in Employment Act of 1967, as added by section 9308(3) of the Older Americans Act Amendments of 1984, is amended by striking out "(g)(1)" and inserting in lieu thereof "(h)(1)".

(c) REMOVAL OF MAXIMUM AGE LIMITATION.—Section 12 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631) is amended—

(1) in subsection (a) by striking out "but less than seventy years of age"; and

(2) in subsection (b)(1) by striking out "but not seventy years of age,".

SEC. 3. EFFECTIVE DATE AND APPLICATION OF AMENDMENTS.

This Act and the amendments made by section 2 of this Act shall take effect on January 1, 1987, except that with respect to any employee who is subject to a collective bargaining agreement—

(1) which is in effect on June 30, 1986,

(2) which terminates after January 1, 1987,

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4))), and

(4) which contains any provision that would be superseded by such amendments, but for the operation of this section,

such amendments shall not apply until the termination of such collective bargaining agreement or January 1, 1988, whichever occurs first.

23

22

Chairman HEINZ. By unanimous consent, I ask that the written statement of Senator Jeff Bingaman be included in the record at this point.

[The prepared statement of Senator Bingaman follows:]

PREPARED STATEMENT OF SENATOR JEFF BINGAMAN

Mr. CHAIRMAN. I wish to commend you and the ranking minority member, Senator John Glenn, for holding this hearing today. It is an excellent opportunity to air some of the issues and problems surrounding the Nation's mandatory retirement policy.

Despite federal legislation to prohibit most forms of age discrimination in the workplace, discrimination based upon age is still a serious problem. Furthermore, older workers encounter many obstacles: 1) negative stereotypes about aging and productivity; 2) job demands and schedule constraints inconsistent with the skills and needs of older workers; and, 3) policies, such as early retirement incentives and discontinued pension credits, that blunt the desire to remain in the labor force.

Today's hearing focuses on the effect of lifting the age-70 cap now contained in the Age Discrimination in Employment Act [ADEA]. Enacted in 1967, ADEA originated from Congress' determination that age discrimination, like discrimination based upon race, religion, sex, or national origin, is inherently contrary to the principle of individual merit. Specifically, the ADEA was enacted "to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; and to help employers and workers find ways of meeting problems arising from the impact of age on employment."

The objectives of the ADEA are certainly worthy. However, its statutory policy permits forced retirement and other forms of age discrimination for persons age 70 and above. The policy acts as an obstacle for those 1.2 million Americans in the labor force over the age of 70 who want to continue to work—either for reasons of economic necessity or for personal self-fulfillment. Many other older Americans who would like to work beyond the age of 70 are forced to retire.

In my state of New Mexico age discrimination is banned for all classes of employees including those employed by the state, local governments, and private business.

Compelling civil rights and economic arguments exist for eliminating forced retirement. According to a recent Department of Labor study, abolishment of the mandatory retirement age would not have a significant adverse impact on other segments of the labor force such as women, minorities, and youth. Allowing older people to remain in the work force will ease the pressures on our retirement income programs. According to recent figures from the Social Security Administration, the elimination of mandatory retirement would save the OASDI trust fund $0.7 billion annually by the year 2000 and $4 billion by 2020.

Elimination of mandatory retirement will reinforce our recognition of the value of the older worker's skills, knowledge, and ability. It will also allow older workers to decide whether they want to continue to work or retire. I think we should allow that freedom of choice.

Thank you Mr. Chairman.

Chairman HEINZ. Our next panel consists of four witnesses; would they please come forward? Victor Steigerwald of Pittsburgh, PA; Solomon Levine of Bridgeport, CT; Wolfgang Granat of Philadelphia, PA; and Dr. Vincent Gallagher of Grumman Corp., Bethpage, NY.

I would like to invite Mr. Steigerwald, who comes from my own home town of Pittsburgh, and who is also listed first on the witness list, to be our first witness on this panel.

Mr. Steigerwald, we welcome you to the committee. We thank you for coming down, and we look forward to listening to what you have to say.

STATEMENT OF VICTOR STEIGERWALD, PITTSBURGH, PA

Mr. STEIGERWALD. Mr. Chairman, ladies and gentlemen, my name is Vic Steigerwald. I am 73 years young. I was raised on the

north side of Pittsburgh, PA, commonly called the garden spot of the world.

I lost my arm at the age of 6, but frankly, that was 67 years ago, and I cannot ever remember having two.

Last year, I lost my job on age alone. I went to my bosses. They tried to go higher, but they could not get past this law.

So here I am. And they are saying to me, "Oh, you are getting old now. It is about time you retire." The first thing that enters your mind, you get a little angry.

I have been on this job so many years. I am still doing a good job. And you go and you ask your bosses. They went to bat for you. They want to keep you. But they cannot beat city hall.

So for about 6 months, I was depressed. The devil would jump up once in a while and say, "Why don't you strike back?"

Well, that is not always too good.

I am a guest here of Senator Heinz and was asked to come to Washington to testify of my own personal experiences. Let me ask you a question. How old is old? Some people are old at 40 and 50. Other people are still productive in their 70's and 80's. So therefore, that proves to you that age is only chronological.

I had to rely on my Social Security check—no income other than that. I do not get a pension. So you are waiting for the 3rd of the month to get your check. This month, you rob Peter to pay Paul; next month, you rob Paul to pay Peter. That is what it is like living under Social Security.

My family doctor tells me anybody that keeps active—and he is speaking of anybody—who is normally in good health, that person is getting the therapy that you need, and it can possibly add 5 years to your life. And I firmly believe that.

In 15 States, mandatory retirement for the public sector employee is illegal, and at least seven bills have been introduced in Congress here to do something about this. At present, Senator Heinz is working on this bill, and I feel it will pass.

Workers 70 and older are allowed to keep their jobs in some cases, as long as they can pass the evaluations that the others have to pass.

Now I am working again. I feel like a first class citizen. I am working through the Area Agency on Aging. And my boss is here with me today to give me some moral support. This is a group of people 55 years old or older who meet four times a year, quarterly meetings, to discuss their problems. And if you were at one of these meetings, you would say, "Oh, these people, they are misfits. Who wants them? Who can help these people?"

Let me tell you something. My boss and immediate superior, Doris Beech, can solve that problem very easily. She has a way with these people, makes them feel good and keeps them happy. I really do not know how she is able to do this.

Now, I do not make a lot of money on this job. Probably a lot of them would turn their noses up at this job. But I am on Social Security, and I get $559 a month, and on this little job, I only clear $250. But without this job, I would not be able to drive a car, pay Blue Cross/Blue Shield, or meet any of my bills. With this job, I am able to pay these bills.

The secret of a full life to me is to be needed, wanted, respected, and in some cases, to be loved. Without these ingredients, you really have nothing in life to live for. It is like slow suicide. That is a terrible word to use, but that is how you vegetate and how you feel. It is slow suicide.

There are more than 1 million workers, as I understand, in this country who are still in our work force, and many of them are financially able to retire, but keep on working for the fulfillment that it gives them. In my case, I work out of necessity. I have been asked, "How long are you going to work?" I do not know. I will leave that in God's hands. But I will work as long as I can, because this job mentally and physically is good for me.

This working out of necessity, there are an awful lot of people. We would have to get welfare, stand in line for free butter and cheese. These people do not want to do that. These are proud people. They want to work and be a part of this country.

Now, I would like to say this. The President of the United States, many Senators and Congressmen, not to mention other men in high positions in the Government, and until yesterday, nearly all the Supreme Court was over 70 years of age. Now, if I can accept the laws that they legislate and pay my taxes, why can't you accept me.

I know my job is not as complex as some other jobs are—world events, domestic affairs—I realize that. But would you believe it? That little job I have is as important to me as some of the jobs that you have. No social position, but you do not need social position around friends.

Chairman HEINZ. Sometimes these jobs up here do not mean social position, either.

Mr. STEIGERWALD. What's that?

Chairman HEINZ. I am afraid that these jobs up here do not mean social position; it depends on whether you do them well or not, and sometimes that does not even help.

Mr. STEIGERWALD. That is right.

I am happy with this job, menial as it may seem. This type of a job, everybody would not do. A lot of people that I work with do not like this job. But to me, I am doing a good job as a Ranger at North Park Golf Course, and in the wintertime, I am doing a good job looking after 700 pair of skates.

OK. I have carried the ball now as far as I can on Senate bill 1054. Mr. Chairman, it is up to you and your committee to take that ball and carry it and come home with a good solution.

The CHAIRMAN. Mr. Steigerwald, thank you very, very much.

[The prepared statement of Mr. Steigerwald follows:]

Mr. Chairman

Ladies and Gentlemen

My name is Vic Steigerwald, I am 73 years young, was born and raised in Pittsburgh, Pa., commonly known as the Garden Spot of the world. Lost my arm at the age of six and frankly can't even remember having two.

As a guest of Senator Heinz and was asked to come to Washington to testify of my personal experience with forced retirement and how it affects you.

How old is old. Age to me is chronological. Some people are old at 40 and 50, but other people are productive in their seventies and eighties. I belong to the latter. The President of the United States, many Senators, Congressmen and nearly the entire Supreme Court are over seventy. Would it not be a shame to lose all these nice people. If I can accept the laws that they put into legislation, pay my taxes, why can't they accept me. Of course I know that their jobs are more important than mine, but my job is all I have and it is important to me.

I have had the experience of sitting at home, doing nothing, waiting for the 3rd of the month for my Social Security check. I was not able to make it stretch far enough. Frankly doing nothing is slow suicide.

My family doctor tells me that working and being active can add five years to my life. By the turn of the century, people will be living to 90 and 100. What are we going to do with all these people?

In 15 states mandatory retirement for public sector employees is illegal and at least seven bills have been introduced in Congress to outlaw the practice on the national level. Senator Heinz has introduced one. In Pennsylvania, mandatory retirement is neither required nor illegal.

Workers age 70 and older can keep their jobs as long as they pass the same evaluations that other employees must have.

Now I feel like a first class citizen paying my taxes and bills and feel like someone. I am only allowed twenty hours a week which amounts to $250.00 a month plus my Social Security which keeps me afloat.

Before, I was a self employed person and worked seven days a week. Received no pension. Was not included in Social Security until 1950. Many people are able to plan their retirement, but my generation had little opportunities. We were products of the Depression days and earned very little money to build up our Social Security. Some families I know live on $400.00 a month. I worked on a Food Bank as a volunteer for two years and during that time interviewed nearly 300 people. A family of four was allowed an income of $10,000 a year and during that time I never met one who was anywhere near that income. We gave them 70 lbs of food per month to tide them over.

At present I am employed by the Adult Services Area Agency on Aging as a Ranger at North Park Golf Course in the Summer and as a skate repairman at the Ice Skating rink in the Winter. If I did not have this job I could not afford to drive a car or pay my Blue Cross and Blue Shield. I am happy with this job, menial as it may be, because it fills my wants and gives me my human dignity. I am happy to say that I am still the head of my family of 4 children, 8 grandchildren and 3 great grandchildren. Would like to live long enough to be the 5th generation like my father and mother.

I intend to work as long as I am able. Will be the first to know when I can't. With the help of God and a good left arm we will get the job done.

Now it is your turn to carry the ball on Senate Bill 1054. I feel you can resolve it.

Thank you for your patience and God Bless you.

Chairman HEINZ. Before I recognize our next witness, I would like to recognize Senator Don Nickles of Oklahoma.

Senator Nickles.

STATEMENT BY SENATOR DON NICKLES

Senator NICKLES. Senator Heinz and Mr. Chairman, thank you very much. I compliment you on the hearing today and look forward to hearing from some of the experts and panelists.

I will also mention that I think myself and probably everybody else on the committee face a lot of difficulties. We have got four committees meeting at the same time, and so I can only be here for a few moments, but I do look forward to hearing at least the thrust of what most of the statements are today.

So thank you.

Chairman HEINZ. Senator Nickles, thank you very much.

I might add that Senator Nickles serves, as does Senator Grassley on the Committee on Labor and Human Resources, which is the legislative committee of jurisdiction, and Senator Nickles, in particular, is a very important member of that committee on this legislation.

So Senator Nickles, I am delighted that you are here.

Senator NICKLES. Thank you.

Chairman HEINZ. I know of all the committee hearings that are scheduled today, and I apologize to all members that this is, for many of you, one out of four committees that you must attend.

Our next witness is Mr. Solomon Levine from Bridgeport, CT.

Mr. Levine.

STATEMENT OF SOLOMON LEVINE, TEACHER AND MEMBER OF AARP, BRIDGEPORT, CT

Mr. LEVINE. Mr. Chairman and members of this committee, I am Solomon Levine, a teacher for the past 30 years in the Fairfield, CT School System.

Thank you for this opportunity to speak on behalf of the American Association of Retired Persons. I am proud to be a member of the American Association of Retired Persons, which, with approximately 22 million Americans over the age of 50, is the largest membership organization in the country.

AARP counts among is members about 6 million persons who work. Every one of them should be allowed to work for as long as he or she individually can make a valuable contribution to their job and to society.

This coming Monday, I will teach my last American history and world geography classes. In describing America's founding and development to eighth graders, I try to instill in them the sense of fairness and equal opportunity that this country is based on—that people have to be judged for what they are as individuals, not by what others perceive them to be because they belong to a certain "group". I teach them that this country has struggled through many difficult times to achieve these goals.

Because I am a good teacher, I believe that my students by the end of my classes, understand and appreciate these ideals. But my students also know that I am being retired against my will. It is

hard for me to explain to them when they ask me—and they do ask me—why these principles do not apply to me.

I began teaching in 1956 at the age of 40, after receiving degrees from Temple University and the University of Bridgeport. I became a teacher because I enjoyed it more than anything else I had done. I never regretted my decision. Teaching has been exciting and inspirational for me. I have devoted myself to making it the same for my students.

My students and their parents tell me I succeed. I have worked to make myself a better teacher, both by educating myself—I have continued my own education by getting a master's degree and additional teaching certificates from the University of Bridgeport and by taking a special interest in the lives of my students. I am active in their extracurricular activities and speak with their parents regularly.

Teaching for me is not just a job, but a commitment. My students are part of my family. For example, to celebrate this trip to Washington, DC, my students made a party and gave me a gift inscribed with their best wishes and affection.

When I first found out that my contract was not going to be renewed, I petitioned the Fairfield Board of Education for a waiver to allow me to teach 1 more year. They said they did not want to set a precedent of having older teachers. They did not say I was not a good teacher anymore. They could not. My students and their parents would not let them say that. Furthermore, I have not been evaluated by the school board for over 5 years.

When the school board said no, I thought I had no choice but to resign. However, I found out that there are at least 19 public school teachers over the age of 70 now teaching in Connecticut. I spoke to the local office of the State Department of Human Rights and Opportunities. They are investigating my case to see if State law prohibits this kind of discrimination.

I know that Federal law does not protect me. I think it should. Even if I am lucky and it turns out that Connecticut law will allow me to continue working, what happens to the same kind of teacher in a State without such a law?

I also agree with AARP that changing the Federal law to protect all persons who wish to and are able to work beyond age 70 must not come at the cost of weakening that law in other areas.

The Age Discrimination in Employment Act is the best tool we have for ensuring that people are not forced out of or denied a job just because of someone else's absurd ideas about the competency of older workers.

For example, the sections of the Federal law that allow for jury trials and special damages are important tools in making sure that older workers' rights are protected. And the coverage of that law must not be denied to any group of employees, regardless of their occupation. These are just some of the important features of the law.

If I have to retire, I will make more money from my pension, Social Security, and part-time job than I do as a full-time teacher. But I do not want to retire. I want to teach.

Thank you for your time and for allowing me this opportunity to speak to you.

Chairman HEINZ. Mr. Levine, thank you very much.

[The prepared Statement of Mr. Levine follows:]

AARP

STATEMENT OF

OF THE

AMERICAN ASSOCIATION OF RETIRED PERSONS

ON THE

ELIMINATION OF MANDATORY RETIREMENT BASED ON AGE

BEFORE THE

UNITED STATES SENATE

SPECIAL COMMITTEE ON AGING

PRESENTED BY

MR. SOLOMON LEVINE

JUNE 19, 1986

American Association of Retired Persons 1909 K Street, N.W., Washington, D.C. 20049 (202) 872-4700

John T. Denning *President* Cyril F. Brickfield *Executive Director*

STATEMENT OF SOLOMON LEVINE ON BEHALF OF

THE AMERICAN ASSOCIATION OF RETIRED PERSONS

ON THE ELIMINATION OF MANDATORY REITREMENT BASED ON AGE

before the United States Senate

Special Committee on Aging

June 19, 1986

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE:

I AM SOLOMON LEVINE, A TEACHER FOR THE PAST 30 YEARS IN THE FAIRFIELD, CONNECTICUT SCHOOL SYSTEM. THANK YOU FOR THIS OPPORTUNITY TO SPEAK ON BEHALF OF THE AMERICAN ASSOCIATION OF RETIRED PERSONS. I AM PROUD TO BE A MEMBER OF THE AMERICAN ASSOCIATION OF RETIRED PERSONS WHICH, WITH APPROXIMATELY 22 MILLION AMERICANS OVER THE AGE OF 50, IS THE LARGEST MEMBERSHIP ORGANIZATION IN THE COUNTRY. AARP COUNTS AMONG ITS MEMBERS ABOUT 6 MILLION PERSONS WHO WORK. EVERY ONE OF THEM SHOULD BE ALLOWED TO WORK FOR AS LONG AS HE OR SHE INDIVIDUALLY CAN

MAKE A VALUABLE CONTRIBUTION TO THEIR JOB AND TO SOCIETY.

THIS COMING MONDAY I WILL TEACH MY LAST AMERICAN HISTORY AND WORLD GEOGRAPHY CLASSES. IN DESCRIBING AMERICA'S FOUNDING AND DEVELOPMENT TO EIGHTH GRADERS, I TRY TO INSTILL IN THEM THE SENSE OF FAIRNESS AND EQUAL OPPORTUNITY THAT THIS COUNTRY IS BASED ON - THAT PEOPLE HAVE TO BE JUDGED FOR WHAT THEY ARE AS INDIVIDUALS, NOT BY WHAT OTHERS PERCEIVE THEM TO BE BECAUSE THEY BELONG TO A CERTAIN "GROUP." I TEACH THEM THAT THIS COUNTRY HAS STRUGGLED THROUGH MANY DIFFCULT TIMES TO ACHIEVE THESE GOALS.

BECAUSE I AM A GOOD TEACHER, I BELIEVE THAT MY STUDENTS, BY THE END OF MY CLASSES, UNDERSTAND AND APPRECIATE THESE IDEALS. BUT MY STUDENTS ALSO KNOW THAT I AM BEING RETIRED AGAINST MY WILL. IT'S HARD FOR ME TO EXPLAIN TO THEM, WHEN THEY ASK ME - AND THEY DO ASK ME - WHY THESE PRINCIPLES DON'T APPLY TO ME.

I BEGAN TEACHING IN 1956 AT THE AGE OF 40, AFTER RECEIVING

DEGREES FROM TEMPLE UNIVERSITY AND THE UNIVERSITY OF BRIDGEPORT. I BECAME A TEACHER BECAUSE I ENJOYED IT MORE THAN ANYTHING ELSE I HAD DONE. I'VE NEVER REGRETTED MY DECISION. TEACHING HAS BEEN EXCITING AND INSPIRATIONAL FOR ME. I'VE DEVOTED MYSELF TO MAKING IT THE SAME FOR MY STUDENTS. MY STUDENTS AND THEIR PARENTS TELL ME I SUCCEED. I'VE WORKED TO MAKE MYSELF A BETTER TEACHER BOTH BY EDUCATING MYSELF - I'VE CONTINUED MY OWN EDUCATION BY GETTING A MASTERS DEGREE AND ADDITIONAL TEACHING CERTIFICATES FROM THE UNIVERSTIY OF BRIDGEPORT - AND BY TAKING A SPECIAL INTEREST IN THE LIVES OF MY STUDENTS. I'M ACTIVE IN THEIR EXTRACURRICULAR ACTIVITES AND SPEAK WITH THEIR PARENTS REGULARLY.

TEACHING FOR ME IS NOT JUST A JOB BUT A COMMITMENT. MY STUDENTS ARE PART OF MY FAMILY. FOR EXAMPLE, TO CELEBRATE THIS TRIP TO WASHINGTON, MY STUDENTS MADE A PARTY AND GAVE ME A GIFT INSCRIBED WITH THEIR WISHES AND AFFECTION.

WHEN I FIRST FOUND OUT THAT MY CONTRACT WAS NOT GOING TO BE

RENEWED, I PETITIONED THE FAIRFIELD BOARD OF EDUCATION FOR A WAIVER TO ALLOW ME TO TEACH ONE MORE YEAR. THEY SAID THEY DIDN'T WANT TO SET A "PRECEDENT" OF HAVING OLDER TEACHERS. THEY DIDN'T SAY I WASN'T A GOOD TEACHER ANYMORE. THEY COULDN'T: MY STUDENTS AND THEIR PARENTS WOULDN'T LET THEM SAY THAT. FURTHERMORE, I HAVEN'T BEEN EVAULATED BY THE SCHOOL BOARD FOR OVER FIVE YEARS.

WHEN THE SCHOOL BOARD SAID NO, I THOUGHT I HAD NO CHOICE BUT TO RESIGN. HOWEVER, I FOUND OUT THAT THERE ARE AT LEAST 19 PUBLIC SCHOOL TEACHERS OVER THE AGE OF 70 NOW TEACHING IN CONNECTICUT. AND, I SPOKE TO THE LOCAL OFFICE OF THE STATE DEPARTMENT OF HUMAN RIGHTS AND OPPORTUNITIES. THEY ARE INVESTIGATING MY CASE TO SEE IF <u>STATE</u> LAW PROHIBITS THIS KIND OF DISCRIMINATION.

I KNOW THAT FEDERAL LAW DOESN'T PROTECT ME. I THINK IT SHOULD. EVEN IF I'M LUCKY AND IT TURNS OUT THAT CONNECTICUT LAW WILL ALLOW ME TO CONTINUE WORKING, WHAT HAPPENS TO THE SAME KIND OF TEACHER IN A STATE WITHOUT SUCH A LAW?

I ALSO AGREE WITH A.A.R.P. THAT CHANGING THE FEDERAL LAW TO PROTECT ALL PERSONS WHO WISH TO AND ARE ABLE TO WORK BEYOND AGE 70 MUST NOT COME AT THE COST OF WEAKENING THAT LAW IN OTHER AREAS. THE AGE DISCRIMIANTION IN EMPLOYMENT ACT IS THE BEST TOOL WE HAVE FOR INSURING THAT PEOPLE ARE NOT FORCED OUT OF OR DENIED A JOB JUST BECAUSE OF SOMEONE ELSE'S ABSURD IDEAS ABOUT THE COMPETENCY OF OLDER WORKERS. FOR EXAMPLE, THE SECTIONS OF THE FEDERAL LAW THAT ALLOW FOR JURY TRIALS AND SPECIAL DAMAGES ARE IMPORTANT TOOLS IN MAKING SURE THAT OLDER WORKERS' RIGHTS ARE PROTECTED. AND, THE COVERAGE OF THAT LAW MUST NOT BE DENIED TO ANY GROUP OF EMPLOYEES, REGARDLESS OF THEIR OCCUPATION. THESE ARE JUST SOME OF THE IMPORTANT FEATURES OF THE LAW.

IF I HAVE TO RETIRE, I'LL MAKE MORE MONEY FROM MY PENSION, SOCIAL SECURITY AND A PART-TIME JOB THAN I DO AS A FULL-TIME TEACHER. BUT I DON'T WANT TO RETIRE.

I WANT TO BE A TEACHER.

THANK YOU VERY MUCH FOR YOUR TIME AND FOR GIVING ME THIS OPPORTUNITY TO SPEAK TO YOU.

SOLOMON LEVINE
125 Bancroft Avenue
Bridgeport, Connecticut 06604
(203) 576-9129 (h)

EMPLOYMENT Fairfield Board of Education, September 1956 - Present

Teacher, Grade 7: World Geography: Study of Continents (occupations, climate, resources, raw materials, agriculture, industries, regions, problems and cities).

Teacher, Grade 8: U.S. History: "A New World to Discover" -- Spain and France in the New World; English Colonies; American Revolution; The Constitution; The Civil War; American Factories and Farms; America in World War I and II; An Age of Science and Technology.

EDUCATION Temple University, 1940, B.S., Advertising
University of Bridgeport, 1955, B.S., Accounting
University of Bridgeport, 1956, M.S.
University of Bridgeport, 1969, Sixth Year Teaching Certificate
University of Bridgeport, 1970, Seventh Year Teaching Certificate

PROFESSIONAL ORGANIZATIONS: Fairfield Education Association
Connecticut Education Association
National Education Association

Hobbies: Reading, cycling, traveling and gardening

Date of Birth: September 21, 1916

Editorial

Little regard shown for teacher's 30 years of work

There's no doubt that the Fairfield Board of Education would have to address some serious questions before granting an exception to allow a teacher past the mandatory retirement age to continue working for another year.

With declining enrollments and school consolidation plans, the board is faced with the prospect of firing teachers who also want to continue teaching and are much younger than the mandatory retirement age.

In addition, the school board must recognize that older teachers put more financial strain on the school system because they must be paid higher salaries than those who are younger and less experienced.

But there are some considerations that might weigh on the other side, and these considerations seem to have been too casually brushed aside by members of the Board of Education in a case recently.

The man in question, Tomlinson Middle School teacher Sol Levine, is a 30-year veteran of the local school system. His years in Fairfield represent significant commitment and dedication to the town and its students. But it appears he is being greatly rewarded for his long years of service.

With their eyes seemingly fixed solely on the pocketbook — to the exclusion of human factors — board members did not even see fit during a recent meeting to raise a motion to vote on Levine's exemption plea. According to Claire Fray, school board chairman, some concern was expressed about establishing a precedent for postponing retirements when the school system is involved in cutting back on the number of teachers.

Meanwhile, school officials have not even batted at questions regarding Levine's ability to teach.

Although the immediate economic factor was considered, possibly overlooked were some long-term effects that wouldn't show up on the balance sheet. But those effects are significant nonetheless.

Officials at all levels of government and education are concerned about the problem of attracting high-quality people to the teaching profession. Low teacher pay creates some of the problem in this regard, but also a concern for prospective teachers is the perception of their professional status: how they are treated by their employers and regarded by the public.

A professional might be willing to accept relatively low pay for an otherwise rewarding job — but not low esteem.

The board's action in the Levine case gives rise to questions about its regard for its most valuable employees. It strongly suggests that 30 years of service to the Fairfield Public School System entitles one to little more than a back-of-the-hand; that when it comes down to a decision on money versus humanity, the greenbacks carry more weight.

That may not be an accurate assessment. But even if that's only a perception created by lack of sufficient explanation, the fallout will not be good for either the teaching profession or the community.

The issue of how to obtain good teachers also comes to bear on this case in a different way, and one suggests there is more concern for money than people. We are prompted to ask why a school system should dispense with an extremely valuable resource in the form of a dedicated and experienced older teacher when state and national organizations suggest younger and less-experienced teachers might not be as good.

After all, the state established a procedure for granting exceptions to mandatory retirement so school systems could take advantage of important resources and qualified people could continue their professions.

From our vantage point, we cannot declare that the Fairfield Board of Education should — or should not — grant Levine's plea for an exception. But the way it looks to us, the request from this 30-year veteran is deserving of a bit more consideration and concern than the school board has shown up to now.

A notable part of South Chicago

[illegible] because administrators

Letters

Rethink teacher retirement

This letter is to urge you and the other members of the Board of Education to act speedily to consolidate the high schools.

My concern is for my son and other

June 15, 1986

To Whom It May Concern,

I am very concerned about some disturbing news which recently came to my attention. It deals with the release of one of the best teachers in the country, Sol Levine. Mr. Levine is approaching the 70 year old plateau and is being given his unconditional release from the Fairfield Public School System. He does not want to retire but is being forced to by a town, not state, law.

Mr. Levine is not just a teacher, but also a friend. I have never met a man who takes such pride in his students, his work, and himself, in that order. Because Levine shows his great faith in his students, they seem to perform better. For example, my son had Mr. Levine for seventh grade Social Studies. My son was not the biggest history buff and had not done too well in his previous years. But Mr. Levine and his caring style of teaching helped my son get "A's" the entire year. Everyone loves Mr. Levine because he always has a sunny disposition, which is also a great aid for one to have to be a teacher. An amiable teacher makes children strive to work harder and I'm sure that I can prove this by checking the grades of present and former students of Levine.

The Fairfield Board of Education would be making a big mistake to let such a person go. Finally, the Board of Ed always seems to stress that the education of our children comes first no matter what. I feel that that is a bunch of bologna because all they want to do is get rid of the higher-paid, experienced staff and hire rookies fresh out of college who will work for $19,300.

Sincerely,

Mrs. Catherine A. Romanello

To Whom It May Concern:

I was saddened to hear that a fine teacher in the Fairfield Public Schools was forced to retire due to his age. As a teacher myself, I see many less competent people in the field. These are people who are just putting in their time until they can retire.

I had an opportunity to have Mr Levine as a teacher, when I went to Tomlinson Jr. High in the 60's and now I am proud to have my son also be a student of his. He is a very interesting up-to-date person who captures the kids' interests and keeps their attention. His classes are never boring or monotonous. He presents the materials in the best possible way so the students have better retention of facts.

I [illegible] will consider

as he truly is still a very competent teacher. I hope he will still be teaching when my other child gets to Tomlinson.

Sincerely,
Mrs Bonnie Lindsay

To Whom it may concern.

At what point in a person's life does one become too old to teach?

Mr. Devine has been my daughter's social studies teacher in the 7th and 8th grades.

He is at a point in his life where his experience, talent for teaching, caring and nurturing are vital to a young person in the 7th and 8th grade, where changes occur constantly.

He is also in good health and wishes to continue teaching. Why do we have to give him up?

Won't you please consider his request as a vital person who wishes to continue his teaching?

Sincerely,
Cherie Procopio

Chairman HEINZ. It is now my pleasure to introduce another constituent, Mr. Wolfgang Granat, who has a unique occupation which he performs—I have heard personally—very well.

Mr. Granat.

STATEMENT OF J. WOLFGANG GRANAT, PHILADELPHIA, PA, VIOLIST, PHILADELPHIA ORCHESTRA

Mr. GRANAT. Thank you, Mr. Chairman and members of the Special Committee on Aging.

Some months ago, a colleague of mine who lives in New Jersey called our attention about the fact that you, Mr. Heinz, were preparing a bill, or sponsoring a bill, to abolish compulsory retirement. And there was a lot of enthusiastic talk that everybody who lives in Pennsylvania should write. And while a lot of talk and a lot of excitement there was, in the end, who wrote? I wrote to you, and I am very happy to have done so, and I thank you all for giving me the opportunity to share my views with you.

Mr. Chairman and members of the Special Committee on Aging, mandatory retirement is a discriminatory, unjust and cruel procedure against men and women of all professions and areas of work who do top quality work, having experience and maturity regardless of age. Their contribution to society is an undiminished asset, physically and mentally. Cutting them off suddenly from circulation and participation has caused suffering, anguish, sickness, and even premature death.

Therefore, mandatory retirement has to be outlawed nationwide.

In my field of music, great artists have been cut off from performing. Our legendary principal flutist, William Kincaid, forced to retire at 65, died within the year. Our former contrabassoonist, Ferdinand Del'Negro just died at age 89, still teaching until the end. Our former assistant principal viola, Leonard Mogill, a fine player and teacher, and a former cellist, Harry Gorodetzer, both retired at 70, and are still going strong.

Not long ago, Jascha Simkins, former first violinist, retired at 65, then playing in Florida, died at age 94. About 1 year ago, he was still active, playing his violin with astounding dexterity, Paganini Caprices, and anything else most difficult.

The only people universally allowed to perform into their nineties, until death, are conductors, concert pianists like Vladimir Horowitz, Claudio Arrau, Mieczyslaw Horszowski, 94, who just performed at Rittenhaus Square in Philadelphia the Mozart B Minor Piano Concerto; and concert violinists like the indominable Nathan Milstein.

The other remarkable exceptions to mandatory retirement have always been the Boston and Chicago Symphonies of the "Big Five", which never had it. Recently, by New York State law, the New York Philharmonic joined the ranks of abolishing compulsory retirement. In fact, when we recently played in Orchestra Hall in Chicago during our 50th anniversary North American tour for 4 weeks, an 83-year-old violinist, Joseph Faerber, was retiring with great honors in the press from the Chicago Symphony.

I have here as proof a whole page of the Chicago Tribune about how this man was honored in his retirement at age 83. This paper is at your disposal if you want it.

Chairman HEINZ. Thank you very much, and without objection, it will be made a part of our hearing record.

[The paper referred to follows:]

Chicago Tribune Thursday, May 15, 1986

A lifetime of musical memories

Tribune photos by Karen Engerson

Mr. GRANAT. Certainly, the great and world-famous Philadelphia Orchestra should enjoy the same rights and privileges, and so should every human being, physically and mentally capable.

There will always be a few who wish to retire early. They should be able to do so at full pension after 25 years of service.

Our retirement age used to be 65; then was augmented to 67, and finally, was fixed at 70. Abolishing mandatory retirement is certainly the wish of all mature members of the Philadelphia Orchestra who still constitute the majority.

For the retirees, Medicare is drastically cut, and IRA's will most probably be taxed.

In my own case, I will have after this season, three more seasons to go. I cannot imagine myself not playing anymore, because I still play with the same kind of enthusiasm and dedication and a young heart as I always did.

Abolishing mandatory retirement would significantly reduce the financial burden of Social Security and the different pension funds.

Thank you all very much for giving me the opportunity to express my views.

Chairman HEINZ. Mr. Granat, thank you very much. I will have a very special question for you when it comes time for questions and answers to the panel.

[The prepared statement of Mr. Granat follows:]

April 27, 1986

The Honorable Mr. John Heinz
Senator (Penna.)
277 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Heinz:

If my sources are trustworthy, all the older colleagues and I myself in the great Philadelphia Orchestra, have heard about a bill you are sponsoring with the object to abolish compulsory retirement nationwide. Needless to say, we are fiercely in favor of this goal. Creative artists and members of all other professions do not lose their dexterity at a certain age. In our field, there are fine musicians performing in their prime way up into the late eighties. Proof of this are the Boston Symphony and the Chicago Symphony Orchestra, which never had a compulsory retirement age. Lately, the New York Philharmonic has joined them, as it became New York State Law. Our retirement age at the moment is 70 years. When our late legendary Principal Flutist, Dr. William Kincaid had to retire, about 26 years ago, it killed him within a year. He was still in his glory at 65, the retirement age of that bygone era. There were many others. I cannot imagine myself stopping to play at 70. My performance is still as youthful, enthusiastic and dedicated as ever; no dead wood here.

So, we mature members of the Philadelphia Orchestra with all our valuable experience ask you emphatically to put all your influence, conviction and eloquence into the balance in favor of abolishing compulsory retirement once and for all.

We all are deeply grateful to you for any effort you will not fail to spare to secure the victory of our dearest goal.

I remain respectfully
yours sincerely,

J. Wolfgang Granat

(over)

June 11th, 1986

Dear Miss Parker:

According to our long distance conversation, I will be glad to cite the salient points of abolishing mandatory retirement.

Mandatory retirement is an unjust and cruel procedure against men and women of all professions and areas of work, who do top quality work regardless of age. Their contribution to society is an undiminished asset, physically and mentally. Cutting them off suddenly from circulation and participation has caused suffering, anguish, sickness and even premature death.

In my field of music, great artists have been cut off from performing. Our legendary Principal Flutist, William Kincaid, forced to retire at 65, died within the year. Our former contrabassoonist, Ferdinand Del'Negro just died at age 89, still teaching till the end. Our former Assistant Principal Viola, Leonard Mogill, a fine player and teacher, and a former cellist, Harry Zorodetzer, both retired at 70, are still going strong. Not long ago, a retired first violinist, Joshua Simkins, retired at 65, then playing in Florida, passed away at 94. About one year ago, he was still active, playing his violin with astounding dexterity, Paganini Caprices and anything; you name it. The only people universally allowed to perform into the 90th or until death, are conductors, concert pianists like Vladimir Horowitz, Claudio Arrau, Mieczyslaw Horszowski (94!!!) and concert violinists like the indomitable Nathan Milstein. Besides them, there is another remarkable exception: The Boston Symphony and the Chicago Symphony never had mandatory retirement. Recently the New York Philharmonic joined their ranks, mandatory retirement being abolished by New York State Law. In fact, when we recently performed in Orchestra Hall, Chicago, during our 50th anniversary North American Tour of 4 weeks, an 83 year old violinist, Joseph Ferber, of the Chicago Symphony was retiring with great honors in the press. Certainly the great and world-famous Philadelphia Orchestra, "one of the big 5", should enjoy the same rights and privileges! And so should every human being, physically and mentally capable! Our retirement age used to be 65; then was augmented to 67 and stands now at 70. I am reasonably certain, my senior colleagues feel the same along these lines.

In concluding, there is an important point: Abolishing mandatory retirement would significantly lighten the financial burden of Social Security.

Best regards,
respectfully yours,

J. Wolfgang Granat

Chairman HEINZ. Dr. Gallagher.

STATEMENT OF VINCENT J. GALLAGHER, M.D., CORPORATE MEDICAL DIRECTOR, GRUMMAN CORP., BETHPAGE, NY

Dr. GALLAGHER. Mr. Chairman and members of the committee, I am pleased to have the opportunity to testify before the Special Committee on Aging regarding older workers and mandatory retirement.

My background lies in the area of occupational medicine. I am the corporate medical director and chairman of the Environmental Planning and Control Program of the Grumman Corp. in Bethpage, NY. My responsibilities include direction of the occupational-related disease program, illness services, and the tropical disease and immunization program for Grumman's 32,000 employees worldwide. I have held my current position for a year and a half, and have served Grumman for the previous 11 years in a similar role.

At the Grumman Corp. I have been exposed to an unusually large number of older workers. The Grumman corporate family has one of the lowest turnover rates in the industry; 62 percent of the Grumman work force is age 40 or older, compared to the 39 percent which is the national average.

Effective January 1, 1985, Grumman entirely eliminated its mandatory retirement age.

Medically, unless an employee has a physical or psychologic impairment, we see no appreciable differences according to age. In our company, older workers significantly improve the quality of our products. For example, each year we award those individuals who have through new ideas and creative approaches saved the corporation substantial amounts of money. The recipients of these awards are generally the older workers.

In our plants, experienced machinists are really considered craftsmen. Their abilities and workmanship are not school-learned, but gained through their experiences in the workplace. We just cannot go out and replace an experienced family member. Older workers provide some of our best quality control.

We believe that the older employee must be looked upon as an individual. There are two drifts in retirement—one toward early retirement and those who wish to continue to work.

The capability of the older worker may be slightly different due to lessening of muscle tone, diminution of visual acuity, lessening of stamina, or the onset of a chronic progressive illness. But within a large corporation, there is a degree of flexibility to accommodate those who have some amount of impairment.

If it is too heavy to lift by oneself, one hopefully gets help whether they are age 30 or 65.

I feel occupational physicians and medical personnel have a positive attitude toward the older employee. Medical departments of corporations most commonly come into contact with the older employee when they report an industrial illness or accident or become ill at work. We try to do a bit more.

As the years progress, the Grumman Medical Department comes into contact with the older employee not only as initially mentioned, but in a whole host of ways.

Each Grumman employee has a confidential medical chart. It is the role of the occupational physician to sensitize management toward a realistic, individualized job performance for older employees.

For workers with physical impairments, flexibility in personnel management is the key. In order to obtain the flexibility, the occupational physician, the employee, and the supervisor will sit in a counseling session, working out what should be reasonably expected of the individual in their job performance. This is oftentimes much easier than it sounds because the older employee is usually cross-trained in a variety of jobs, some less strenuous than others.

In cooperation with management, supervision, job opportunity personnel, and medical, a job is usually found where the afflicted older worker can be reasonably expected to perform.

At Grumman, as in many large corporations, a variety of physical and biologic surveillance programs are in place. They range from executive physicals, test pilots, mobile equipment operators, Interstate Commerce Commission vehicle operators, respiratory hazard certification, and technical representatives who support the Armed Forces. Due to the nature of the programs, the Grumman Medical Department has an opportunity to come into close contact with the older employee. It not only gives us an opportunity to do what is required, but further allows us to assist, guide, and counsel our employees on their lifestyle-induced and naturally occurring medical problems.

Hopefully, by being committed to our employees through a variety of surveillance and educational programs, we will have an impact on the three most commonly occurring diseases at Grumman: hypertension, diabetes, and heart disease.

When medical problems arise, the medical department will consult with an employee and their spouse, frankly discussing their medical problems. The Grumman physicians do not make individuals' decisions, but offer viable options, one of which may be retirement. Those individuals who are between decisions as to whether or not to retire are given the option of the Phased Retirement Program. This allows them a diminished flexible work schedule within a particular program management, which reduces the psychological stress of their decision. This allows the individual the time to come to the proper conclusion.

Mr. Chairman, as you can tell, I am not a believer in mandatory retirement. Individuals should be given the opportunity to take early retirement and perhaps start a second career. Conversely, as long as the individual can do a reasonable job in the position they hold, they should be allowed to continue to work until retirement plans are finalized.

I have witnessed many examples of older workers who have less lost time due to workers' compensation illness and accident than younger workers. Their absentee rate is no worse than younger workers. They are more productive because of their increased knowledge and skill.

At one time, Grumman was refitting some amphibians in Stuart, FL, and we had a contract pilot, a retired Grummanite, ferrying the amphibians from countries in South America. He was age 72 at the time.

One of the foremost aerospace stress analysis persons was fully functional at age 70. Another is one of our more popular drivers, retired at age 70, who is now a very active golfer.

It is not unusual to find Grumman employees who are entering their 30th, 40th, and a few entering their 50th year of service.

In summary, I am not in favor of a mandatory retirement age, but I am in favor of individualized judgments. The older worker remains productive with the knowledge and skill only obtained in their lifetime of work.

The other employee knows how to make the production system work, to produce or obtain the product. In Grumman, with a healthy management attitude, the older worker continues to be part of the environment of belonging, caring, and sharing.

With these attitudes, age discrimination cannot find a foothold. The pride of workmanship is one that is held in esteem by all ages of the Grumman family. The illness that occurs in older life can be flexibly accommodated with the multifaceted manufacturing corporation.

Retirement is that phase of life when we enter upon a new undertaking. Even upon retirement, through the Grumman retirees clubs, there continues to be interest in what goes on within the family.

The end result is that Grummanites who take retirement retire to something, not away from the job.

Thank you very much.

Chairman HEINZ. Dr. Gallagher, thank you very much.

[The prepared statement of Dr. Gallagher follows:]

Vincent J. Gallagher, M.D.
Corporate Medical Director
Grumman Corporation

Mr. Chairman and Members of the Committee:

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At the Grumman Corporation I have been exposed to an unusually large number of older workers. The Grumman Corporation "family" has one of the lowest turnover rates in the industry, sixty-two percent of the Grumman work force is age forty (40) or older compared to thirty nine percent for the National Average (DOL Employment and Earnings, March 1985). Effective January 1, 1985 Grumman entirely eliminated it's mandatory retirement age.

Medically, unless an employee has a physical or psychologic impairment, we see no appreciable differences according to age. In our company older workers significantly improve the quality of our products. For example, each year we award those individuals who have through new ideas and creative approaches saved the corporation substantial amounts of money. The recipients of these awards are generally older workers. In our plants, experienced machinists should really be considered craftsmen. Their abilities and workmanship were not school learned, but gained through their experiences in the workplace. We can't just go out and replace an experienced family member. Older workers provide some of our best quality control.

We believe that the older employee must be looked upon as an individual. There are two drifts in retirement - one towards earlier retirement and those who wish to continue to work. The capability of the older worker may be slightly different due to lessening of muscle tone, diminution of visual acuity, lessening of stamina or the onset of a chronic progressive illness. But within a large corporation there is a degree of flexibility to accommodate those who have some amount of impairment. If it is too heavy to lift by one self, one hopefully gets help whether they are age thirty or sixty five!

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As the years progress the Grumman Medical Department comes into contact with the older employee not only as initially mentioned, but in a whole host of ways. Each Grumman employee has a confidential medical chart. It is the role of the occupational physician to sensitize management towards a realistic individualized job performance for older employees. For workers with physical impairments, flexibility in personnel management is the key. In order to obtain the flexibility, the occupational physician, the employee and the supervisor will sit in a counseling session, working out what can be reasonably expected of the individual in their job performance. This is often times much easier than it sounds because the older employee is usually cross-trained in a variety of jobs, some less strenuous than others. In cooperation with management, supervision, job opportunity personnel, and medical, a job is usually found where the afflicted older worker can be reasonably expected to perform.

At Grumman, as in many large corporations, a variety of physical and biologic surveillance programs are in place. They range from executive physicals, test pilots, mobile equipment operators, Interstate Commerce Commission vehicle operators, respiratory hazard certification, and technical representatives who support the Armed Forces. Due to the nature of the programs the Grumman Medical Department has an opportunity to come into close contact with the older employee. It not only gives us an opportunity to do what is required, but further allows us to assist, guide and counsel our employees on their life style induced and naturally occurring medical problems. Hopefully by being committed to our employees through a variety of surveillance and educational programs, we will have an impact on the three most commonly occurring diseases at Grumman - hypertension, diabetes, and heart disease.

When medical problems arise, the Medical Department will consult with an employee and their spouse, frankly discussing their medical problems. The Grumman physicians do not make the individual's decision but offer viable options, one of which may be retirement. Those individuals who are between decisions as to whether or not to retire are given the option of the "Phased Retirement Program". This allows them a diminished flexible work schedule within a particular program management, which reduces the psychological stress on their decision. This allows the individual the time to come to the proper conclusion.

Mr. Chairman, as you can tell, I am not a believer in mandatory retirement. Individuals should be given the opportunity to take early retirement and perhaps start a second career. Conversely, as long as the individual can do a reasonable job in

the position they hold, they should be allowed to continue to work until retirement plans are finalized.

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In summary, I am not in favor of a mandatory retirement age, but I am in favor of individualized judgements. The older worker remains productive with the knowledge and skill only obtained in their lifetime of work. The older employee knows how to make the production "system" work, to produce or obtain the product. In Grumman, with a healthy management attitude, the older worker continues to be part of the environment of belonging, caring and sharing. With these attitudes age discrimination cannot find a foot hold. The "Pride of Workmanship" is one held in esteem by all ages of the Grumman "family". The illness that occurs in older life can be flexibly accommodated within a multifaceted manufacturing corporation. Retirement is that phase of life when we enter upon a new under taking. Even upon retirement, through the Grumman Retirees Clubs, there continues to be interest on what goes on within the "family".

The end result is that Grummanites who take retirement, retire to something, not away from the job.

Chairman HEINZ. I have a number of questions for each of you, but I do want to make one announcement, and that is that one of our witnesses on this panel, Mickey Rooney, is unable to be here. He actually got on the plane in Los Angeles to come out here yesterday, but there was a mechanical problem with the engine after takeoff. The plane had to go back, and he was unable to resume his travel to be here. He would have been quite an interesting witness to have. So I will just make that announcement for people in the audience and for the witnesses who did not understand what had happened.

[The prepared statement of Mickey Rooney follows:]

MICKEY ROONEY ADDRESS

to the

U.S. Senate Special Committee on Aging

Mr. Chairman, distinguished members of the committee, I'm delighted to have been asked to speak in these hallowed halls.

I've been asked to speak regarding how I feel about age discrimination. Might I remind this august body that it is no sin to grow old. It is no sin to gain more experience in life through age, for after all age is nothing but experience and some of us are more experienced than others.

Bill 1054 is an attempt to dissolve what is an artificial cap, allowing an employer to decide that a person on obtaining the age of seventy (70) must step down, step aside, push a button, pull the plug on his own creativity, his own individuality and freedom of choice.

I am 66 years of age and the good Lord above has given me the opportunity of going through the infiltration course of life, with all its ups and its downs, its highs and its lows, its sadness and its joy. He has allowed myself, and all of you, and indeed all this great nation, to be survivors. I'm 66 years of age and I have no plans nor do I see a light in any tunnel saying retirement for Mickey Rooney. Nor should any such sign be imposed upon me, merely because someone thinks that because of my age my usefulness or my creativity has declined. I've often said I'll work as long as the public wants me and so far I've been through four publics.

If the current law were extended, instead of being amended, many members of this Senate, many members of the House, of the Supreme Court and even our great President might have to step down. Their vast experience would count for nothing. And should this be the case with every day workers? Let people be judged on their own individual merits. Should we have said to Arthur Fiedler when he reached the age of seventy, "Mr. Fiedler, I'm sorry it's time to stop." Depriving ourselves of such great talent, or should we have said the same to Picasso, Einstein, Stravinsky, or Edison. And if we go back even further should we have required Benjamin Franklin to stop everything he did for our new nation after he had reached seventy?

I believe, without any doubt, that everyone of us in life has an innate feeling, a spiritual feeling, if you will, of when he should get off, when he should take his bow and leave with dignity and respect. But there should never be, and I hope that this Senate, a small part of which I am honored to address this day, will never bring to pass or entertain any legislation, which stops the creative incentive of any human being, which keeps them from doing their most fertile and creative work.

For if there were such legislation I should not at age 66 be able to begin a new play, nor entertain thoughts of taking it to

Broadway, nor would I be here today. We do not need to defend our age, nor our creativity, we need only fear our right to continue to use them at our discretion.

In conclusion, I would like to leave you with this thought: We in America should never stop being what we are best; we should never stop starting up and finishing the job the way we want to do it: individually.

Thank you.

Chairman HEINZ. Mr. Steigerwald, you testified that your job is quite important to you in terms of your income. How much do you get from Social Security, and how much do you get from your job per month?

Chairman HEINZ.

Mr. STEIGERWALD. Well, I get $559 a month from Social Security, and I am only allowed to work on this job 4 days a week, or 20 hours a week, and I clear after taxes about $250; added to my $559, it just keeps me afloat.

Chairman HEINZ. So you get about one-third of your income from your job.

Mr. STEIGERWALD. Right.

Chairman HEINZ. Now, you purchase your own health insurance, some additional health insurance, and you also have a car.

Mr. STEIGERWALD. Yes.

Chairman HEINZ. Would you be able to have both of those if you did not have a job?

Mr. STEIGERWALD. No way, no way. Our agency is able to give me, since I have been working for them, $80 every 3 months to keep up my Blue Cross and Blue Shield. Otherwise, I would be paying $116 every 3 months.

Chairman HEINZ. Now, you were in one sense very fortunate. You lost your job. You were able to get back an almost identical job through title V of the Older Americans Act.

Mr. STEIGERWALD. Right.

Chairman HEINZ. And as a matter of fact, I know that Doris Beech, who is from the Allegheny County Area Agency on Aging, is here in the audience today.

Mr. STEIGERWALD. That is right, and she does a very good job.

Chairman HEINZ. And I gather she gave you a big boost in helping you regain your job under title V.

Mr. STEIGERWALD. That is right.

Chairman HEINZ. Let me ask you, you were fortunate, but do you think other workers who lose their jobs at age 70 are usually as fortunate as you?

Mr. STEIGERWALD. No; certainly not.

Chairman HEINZ. What do you think happens to them?

Mr. STEIGERWALD. I know some that just lie around, vegetating. As a matter of fact, two fellows, good friends of mine, they are eventually going to be alcoholics. They go up to the saloon two or three times a day; nothing else to do, so they go up there. And it is a shame, because you can get a liking for that kind of stuff. And I have been telling them that that is the way they are going to turn out, but they will not listen to me, you know.

Chairman HEINZ. You mentioned that you have got four children, eight grandchildren, three great-grandchildren, and you probably have a few more coming along here and there.

Mr. STEIGERWALD. That is right.

Chairman HEINZ. And that you are the head of your family.

Mr. STEIGERWALD. That is right. I am the head of that family. There are four children, eight grandchildren, and three great-grandchildren.

Chairman HEINZ. Do you think you would still be the head of the family if you were not working, if you did not have a job?

Mr. STEIGERWALD. I do not think I would feel very good; probably depressed. I was depressed for a while.

I might add that we are having our 55th high school reunion this coming June 28, and we intend to have these as long as some of us are around. So that gives you an idea of looking forward.

Chairman HEINZ. I think it will be, judging from appearances here today, a real wing-ding.

Mr. STEIGERWALD. Yes.

Chairman HEINZ. Let me ask Mr. Granat at this point, you have been with the Philadelphia Orchestra quite some time.

Mr. GRANAT. This is my 30th season.

Chairman HEINZ. Thirtieth.

Now, if you were suddenly to become the music director of a new orchestra, and you were responsible for choosing the players in that orchestra, would you choose people who had just graduated with the highest possible marks from the Juilliard School, who had just won the competition for pianist or violinist—in other words, if you were able to, would you take a team of nothing but immediate first-round draft picks—something that the Philadelphia team did not do yesterday in the draft; they traded away all their first-round draft picks; Pittsburgh does not have an NBA team anymore, or even an ABA team—or, would you get some players who had experience playing, or would you try and have a mix?

What would you do?

Mr. GRANAT. Senator, if you mean creating a new ensemble, completely——

Chairman HEINZ. That is what I mean. Would you have a team of rookies?

Mr. GRANAT. I would choose as the bulk of it experienced and mature players, and for some positions, young and gifted players, because the young and gifted players have all the technical proficiencies, but they lack experience, tradition, ensemble playing. They are all educated when they leave the great music schools to be soloists and are so individualistic that they have a hard time at first to mold into the big whole which is a symphony, or should be a symphony orchestra, or even a chamber orchestra.

But I would certainly choose a certain segment of young people, of gifted people, but the bulk of it should be experienced players who have played with great conductors in the past.

Chairman HEINZ. Now, you mentioned in your testimony the "Big 5" symphonies, and coming from Pittsburgh, we always hope to be in the "Big 5," but we have to usually expand the category, I think, to include the "Top 6" for us to be in that. But the "Big 5," as I recollect, include Boston, New York, Philadelphia, Chicago, and Los Angeles—is Los Angeles one of them——

Mr. GRANAT. No, no. Cleveland.

Chairman HEINZ. Cleveland. And you say that now, three—Chicago, New York, and Boston—three of the "Big 5" have eliminated mandatory retirement.

Mr. GRANAT. Boston and Chicago never had any compulsory retirement, and now New York, the New York Philharmonic, abolished mandatory retirement by New York State law.

Chairman HEINZ. And so only two now of the "Big 5" will have mandatory retirement—Philadelphia and Cleveland—is that right?

Mr. GRANAT. Only two of the "Big 5". But you know, the "Big 5" is a little bit narrowing down, because we really have more fine orchestras than just the "Big 5".

Chairman HEINZ. We in Pittsburgh know that. [Laughter.]

Mr. GRANAT. Yes. Pittsburgh had a very fine conductor in his day, and we remember him very well. We remember him with great love and admiration—the late William Steinberg. He was one of the finest. And when he just made it to Boston, he was just too sick to be able to enjoy it. But he made Pittsburgh really one of the first-class orchestras.

Chairman HEINZ. But I wanted to be clear for the record that there are many other good orchestras, Los Angeles and many others——

Mr. GRANAT. San Francisco, and the Minnesota Orchestra——

Chairman HEINZ. Senator Glenn of Ohio is here, and he is delighted to know that Cleveland is in the top five, and I do not want to start a parochial argument.

Could I ask you another question? Could you play for us a brief selection so we can all enjoy it?

Mr. GRANAT. I will be happy to. I have not warmed up, but that does not matter.

Chairman HEINZ. Why don't you get ready, and I will just ask Dr. Gallagher one or two questions. Could you get your viola ready?

Mr. GRANAT. Yes, I will.

Chairman HEINZ. Dr. Gallagher, you present some extremely valuable testimony, and I was fascinated by the way you handle your older workers when they actually begin to have some difficulties because of ailments that we often associate with age.

When it is necessary to move an older worker into a less demanding position, using your methodology, how do they usually adjust?

Dr. GALLAGHER. They generally adjust very well, because often they may be moved out of one category of job to a less strenuous job, but usually within the same area, so they are not losing their identity from the area that they work in.

For instance, in the machine shop, they may not be able to do maintenance on the machines anymore, but they certainly can work in the tool crib with the equipment that they are familiar with already. So they are still working within the same area and can still identify with that area.

So we do not really find it a big problem.

Chairman HEINZ. Do you think that the policy that Grumman has is a profitable policy? Do you think that your policy is more profitable, or as profitable, as simply cutting people off right at age 70, as the law allows?

Dr. GALLAGHER. I would say so. We had, within the 11 years I have been there, two voluntary retirement programs, and most of those people who voluntarily retired, only 11 percent of those who were eligible took the retirement program, to show that people still do want to work.

I would venture to say about 9 percent of those who took voluntary retirement are working for us as job shoppers, because we needed the skills that they had to bring back.

Chairman HEINZ. Let me ask Mr Levine, Mr. Levine are you a better teacher today than you were 20 or 30 years ago?

Mr. LEVINE. Mr. Senator, yes, I am a better teacher.

Chairman HEINZ. Are your students better off today than they were 20 or 30 years ago?

Mr. LEVINE. Yes, sir; they are better off today because I am more knowledgeable, because of my experience in going to college, advancing myself in degrees.

Chairman HEINZ. Now, you are looking just for a 1-year waiver, which does not seem at all unreasonable. I would be a little afraid of you if you were my teacher. You seem to be very competent and very knowledgeable. I am afraid you might grade me quite accurately on any test that you gave me regarding geography. You remind me of many of the teachers I had, who apparently did not do too bad a job, in spite of the fact that I always thought that they were quite formidable, and you appear formidable.

But let me ask you this. Are there many other teachers like you who would like to work a year or two longer? Do you know of others?

Mr. LEVINE. I do not know, Mr. Senator, because I am about the oldest one in my system. The other teachers are much younger, since I started at the age of 40. And it is very difficult also to communicate with the teachers. I believe they are afraid to speak to me, not because I believe that they disagree, but if they do, I wonder how the reaction is going to be once they become 70, and they would like a mandatory age, which remains to be seen.

Chairman HEINZ. You said something very interesting in your testimony, namely, that you could make more money being retired, with a part-time job, than you can with a full-time job.

Mr. LEVINE. Yes, sir.

Chairman HEINZ. So why do you want to make less money?

Mr. LEVINE. I have been in this business, I would say, as a professional, for 30 years, and every year seems to be getting better, Mr. Senator. As I explained, I love and I enjoy not only the students, but also my profession, and I find it most challenging and envigorating going to work each day and teaching the students. They help me to feel young—not 70 or getting older—no way.

Chairman HEINZ. I would like now to ask Mr. Granat if he would comply with my earlier request and perhaps play for us a brief selection, even though he has not warmed up.

Mr. Granat, may I introduce you to Senator Glenn, of Ohio.

Senator GLENN. How are you? I am very glad to see you. I am sorry I could not be here for the whole session this morning, but I will be glad to have you play for us.

Mr. GRANAT. Thank you. Please allow me—I am sorry I will have my back to you.

Chairman HEINZ. Please proceed.

Mr. GRANAT. Ladies and gentlemen, I will play for you the sarabande of the 4th Suite by Johann Sebastian Bach.

[Mr. Granat proceeds.]

[Applause.]

Chairman HEINZ. I am tempted to ask for an encore, but that would be unfair.

Thank you very much, Mr. Granat. That was absolutely beautiful, and I think we all not only enjoyed it, but admired seeing a master violist play. Thank you so much.

Mr. GRANAT. You are welcome.

Chairman HEINZ. It is now my privilege to introduce another lover of music, Senator John Glenn.

STATEMENT BY SENATOR JOHN GLENN

Senator GLENN. Thank you, Mr. Chairman, very much.

Mr. Granat, you play like you are not a day over 39; how about that. [Laughter.]

Chairman HEINZ. He plays a little better than Jack Benny, too.

Senator GLENN. Yes, that is right. But I do not think you could have gotten that experience at 39, and that is all the more reason for the hearing that we are having here today.

I would ask that my more lengthy opening statement be included in the record, Mr. Chairman.

Chairman HEINZ. Without objection, so ordered.

[The prepared statement of Senator Glenn follows:]

PREPARED STATEMENT OF SENATOR JOHN GLENN

As the senior Democratic member of the Senate Special Committee on Aging, I am pleased that the Committee is holding today's hearing, "Working Americans: Equality at Any Age." As an original cosponsor of S. 1054, which would prohibit mandatory retirement based solely on age, I look forward to today's testimony.

It may not come as a surprise to anyone that the President—at age 75—supports an end to age-based retirement policies. President Reagan often gives "private sector initiatives" high praise. In this case, it is well deserved. Even in the absence of federal legislation, almost half of all larger companies have voluntarily eliminated mandatory retirement practices. In addition, a number of states have eliminated them as well.

I believe that imposing any mandatory retirement age on our citizens is wrong. It robs us of many important contributions. If history has shown us anything it is that those who have the experiences of life have much to contribute. For instances:

Grandma Moses started painting in oils when she was 78.

Benjamin Disraeli became Prime Minister of England for the second time at age 70.

Frank Lloyd Wright designed the Guggenheim in his 90's.

Mandatory retirement is wrong and unfair and unwise. Senior citizens are one of our greatest resources, and it makes sense that we should eliminate policies which prevent them from contributing to our society.

I recently learned that a good friend of mine was mandatorily retired from his law firm at age 70. And he was a partner in the firm. That friend is Sargtent Shriver. We all know of the contributions Sarge has made to this country, particularly through the Peace Corps.

When the Peace Corps was created in the early 1960s, its focus was on young and caring Americans performing public service. Today, more and more, we hear stories of our nation's senior citizens going abroad to make their contributions through service to those in need.

The Age Discrimination in Employment Act (ADEA), enacted during the 1960s, acknowledges that discrimination on the basis of age is as unfair and unjust as discrimination based on race, sex or national origin. Originally, the Act only included those "older workers" aged 40 to 65. It was amended in 1978, to include "older workers" aged 40 to 70, and the age-70 cap was removed for federal employees.

Today, through S. 10954, we are proposing to lift the age limit for all employees. At a time when increasing numbers of older Americans are healthier, better educated and living longer, this proposal makes sense and represents the next logical step toward protecting older workers' rights.

At a time when the demographics of our population and labor force are changing very dramatically, we must plan appropriately to meet our future. The number of younger workers will peak in about four years and begin declining. We will need more middle-aged and older workers in order to maintain economic productivity and

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growth, and to strengthen our economy. At a time when the Social Security Administration projects that ending mandatory age-based retirement will bolster the Social Security System, it makes sense that we should lift ADEA's cap. If we want to be a humane society and not allow blatant discrimination against our senior citizens, now is the time to eliminate mandatory retirement.

Today, more than a million Americans aged 70 and over participate in our work force. Some work for reasons of self-fulfillment; others for reasons of economic security. Federal law now denies these people the same guarantees of equal opportunity in employment that other Americans enjoy. Employment opportunities for all Americans must be based upon who they are and what they can do, not on when they were born.

Older Americans have given much and have much to give. They have built our nation into what it is today. In my mind, that is an accomplishment of which they can be proud and that all Americans should appreciate. If older Americans are willing to share their knowledge and continue to be productive in the work force, we should welcome them and take advantage of their experience—just as we should any other valuable natural resource. To waste this resource is as unwise as it is unfair.

I look forward to today's testimony.

Senator GLENN. I am sorry that we did have other hearings scheduled at the same time this morning, hearings that I had to be at, and so I regrettably got here very late, and I cannot stay very long. But that is one of the problems here on Capitol Hill.

Let me say briefly, though, that I believe that imposing any mandatory retirement age on our citizens is wrong. It robs us of many important contributions, and if history has shown us anything it is that those who have the experiences of life have much to contribute.

For instance, Grandma Moses started painting in oils when she was 78; Disraeli became Prime Minister of England for the second time at age 70; Frank Lloyd Wright designed the Guggenheim in his 90's.

Mandatory retirement is wrong and unfair and unwise. Senior citizens are one of our greatest resources, and it makes sense that we should eliminate policies which prevent them from contributing to our society.

In addition to that—just looking at it from a demographic standpoint for our country—we know that at a time when the demographics of our population and labor force are changing very dramatically, we must plan to meet our future. And one of the things that this committee prides itself on is trying to foresee the future, trying to project out what is going to happen, and trying to take action which will prevent disagreeable things happening. We try and make sure that we foresee things into the next decade, or into the next couple of decades.

The facts are that the number of younger workers will peak in about 4 years and begin declining. We will need more middle-aged and older workers in order to maintain economic productivity and growth and really, to strengthen our whole economy. So at a time when the Social Security Administration projects that ending mandatory age-based retirement will bolster the Social Security system, it makes sense that we should lift ADEA's cap.

We want to be a humane society and not allow blatant discrimination against our senior citizens, and now is the time to eliminate mandatory retirement.

That is the reason for this hearing, and I compliment our distinguished chairman for calling this hearing, and I am sorry that I

cannot be here for the whole hearing, Mr. Chairman. We do have conflicting demands.

Chairman HEINZ. Thank you, Senator Glenn. I want to thank you for a very fine statement. I think the record should note that you have been in the forefront with such people as Claude Pepper, who would agree with you and me and our witnesses here today, and I want to point out that Senator Glenn is the principal cosponsor of S. 1054, the Heinz-Glenn bill, which is the bill that would eliminate mandatory retirement.

Senator GLENN. Thank you. And I appreciate all of you being here this morning.

Thank you, Mr. Chairman.

Chairman HEINZ. Senator Glenn, thank you very much.

Mr. Levine, do you have a comment?

Mr. LEVINE. Mr. Chairman, for the record, since Senator Dodd has been unable to be here at this hearing, I would like to have inserted the AARP's and my thanks for his recent vote in the Labor Committee against the proposed general counsel for the EEOC. This was very important to us.

And listening to you and the rest of the distinguished Senators, and these gentlemen, I am returning to Connecticut today with a message of a great deal of confidence.

Thank you very, very much.

Chairman HEINZ. I want to thank all of our witnesses. We have one more panel. I appreciate the distances you have all come—two from Pennsylvania, one from Connecticut, and one from New York. So I thank you all and appreciate the time, effort and trouble you have taken, but most of all, what I appreciate is your excellent testimony to the committee here this morning.

Thank you very much. See you in North Park, Mr. Steigerwald.

Chairman HEINZ. Our last panel consists of Mr. Mark de Bernardo, representing the U.S. Chamber of Commerce, in Washington, DC, and Mr. Raymond C. Fay, who is an attorney with the office of Haley, Bader & Potts, also in Washington, DC.

Gentlemen, please take your seats. I am going to ask Mr. de Bernardo to testify first.

Mr. de Bernardo, welcome, and please proceed.

STATEMENT OF MARK A. DE BERNARDO, LABOR LAW MANAGER, U.S. CHAMBER OF COMMERCE, WASHINGTON, DC

Mr. DE BERNARDO. Thank you, Mr. Chairman.

I am Mark A. de Bernardo, manager of labor law and special council for domestic policy at the U.S. Chamber of Commerce. I serve as committee executive of the Chamber's Labor Relations Council and am active in the labor sections of the American Bar Association and the District of Columbia Bar.

The chamber appreciates this opportunity to express its views on the Age Discrimination in Employment Act in general and in particular, its support for maintaining the age 70 mandatory retirement cap and its opposition to the ADEA's liquidated damage and jury trial provisions.

While the chamber recognizes and appreciates the substantial contributions, experience and loyalty of our country's most senior

workers, it also recognizes the need for consistent, definite, and rational human resource planning and pension policies.

The Chamber believes that S. 1054, by lifting the age 70 mandatory retirement level now available to employers under Federal law, would disrupt unnecessarily personnel and pension practices and ultimately hurt employers and employees.

It is necessary and appropriate that employers and employees have a structure to deal with the sensitive but inevitable issue of retirement.

Under current law, employers have the option of implementing a mandatory retirement policy at age 70 for most workers. Simply to remove this option and thereby vitiate the consensus regarding maximum retirement age in our society, particularly without changes in the jury trial and liquidated damages areas, would subvert this necessary retirement structure, prove disruptive and costly to our society, and insert a great deal of uncertainty into employers' personnel and pension programs.

At this point, for the sake of brevity, since the hearing has been fairly long, what I would like to do is to summarize some of the points that we have in terms of our testimony.

Chairman HEINZ. Without objection, so ordered.

Mr. DE BERNARDO. Obviously, it is more extensive in the written statement.

But to lift the age 70 cap, requiring employers to retain older workers indefinitely or show just cause for dismissal would have, in our estimation, numerous negative ramifications.

One of those is that it would subject older workers to more rigorous performance evaluations and would force employers to keep book on its most senior and most valued employees, treat the same way a valued employee of 75 that you would a recently hired employee of 25, and it would force employers to perform these evaluations and dismissals, which can be much more traumatic than a dignified retirement at a set age.

It would also accelerate the dismissal of some older workers. Under current law, employers sometimes do carry older workers with diminished skills in anticipation of a date-certain retirement at 70. If no date-certain retirement is available to employers, they may be inclined to accelerate that dismissal process, and in fact, this could shorten the careers of many older workers, in contravention of the purposes of this bill.

We also feel it would disrupt current personnel and pension practices and planning. It would contradict the retirement provisions of many long-term collective-bargaining agreements. It would disadvantage promotional opportunities for younger employees. It could, in fact, frustrate affirmative action programs and exacerbate the already higher unemployment rate of minorities and women. It could increase substantially the number of age discrimination suits—a major concern of ours.

It would, in fact, have implications in terms of the work force in terms of reduced productivity; it would eliminate the useful psychological function of mandatory retirement policies that they do serve in some respects. It could have ramifications on job safety and health and ultimately would cost jobs by delaying turnover in the creation of new job opportunities through the ripple effect.

Again, these are concerns that the business community has with the lifting of that age 70 mandatory retirement cap.

I do wish to make a comment with regard to the need to make ADEA consistent with other equal employment laws by eliminating jury trials and liquidated damages.

Jury trials have tended to create extraordinarily large verdicts. The deep-pocket assumptions of juries inevitably increase the risk of windfall verdicts when an elderly employee faces a large corporation in court.

Such verdicts encourage the filing of claims. The possibility for double-back pay, unlikely to be available under conciliation, discourages out-of-court settlements and increase legal costs and thereby blocks our court calendars.

We feel that the jury trial and liquidated damages provisions do not enhance employment opportunities for the elderly on their merits. However, an ADEA plaintiff's right to a jury trial and liquidated damages does have the effect of filling our courts with more and longer litigation; is less likely to be meritorious, less likely to be settled, and more likely to be appealed.

In conclusion, we feel that the age 70 mandatory retirement cap makes sense, is fair to employers and employees, is evenhanded, allows for a dignified retirement at a set age, permits the business community to implement sound, predictable and consistent personnel and pension programs.

For these reasons, the age 70 mandatory retirement cap of the ADEA should be retained. The chamber respectfully urges the Senators on this committee and the Senate as a whole to oppose S. 1054.

However, should Congress amend the ADEA in order to make it consistent with title VII and all other antidiscrimination laws, the chamber believes that Congress should eliminate the ADEA's jury trial and liquidated damages provisions. Such changes in the law not only would be consistent, but also would be equitable for employers and employees alike.

I appreciate this opportunity to appear before you today.

[The prepared statement of Mr. de Bernardo follows:]

Statement of the Chamber of Commerce of the United States

ON: THE AGE 70 MANDATORY RETIREMENT CAP AND S. 1054, THE AGE DISCRIMINATION IN EMPLOYMENT AMENDMENTS OF 1985

TO: SENATE SPECIAL COMMITTEE ON AGING

BY: MARK A. DE BERNARDO

DATE: JUNE 19, 1986

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

STATEMENT
on
THE AGE 70 MANDATORY RETIREMENT CAP
and
S. 1054, THE AGE DISCRIMINATION IN EMPLOYMENT AMENDMENTS OF 1985
before the
SENATE SPECIAL COMMITTEE ON AGING
for the
U.S. CHAMBER OF COMMERCE
by
Mark A. de Bernardo
June 19, 1986

I. STATEMENT OF INTEREST

I am Mark A. de Bernardo, Manager of Labor Law and Special Counsel for Domestic Policy at the U.S. Chamber of Commerce. I serve as Committee Executive of the Chamber's Labor Relations Council and am active in the labor sections of the American Bar Association and the District of Columbia Bar.

The Chamber appreciates this opportunity to express its views on the Age Discrimination in Employment Act ("ADEA" or "the Act"), 29 U.S.C. 631 et seq., in general, and, in particular, its support for maintaining the age 70 mandatory retirement cap and its opposition to the ADEA's liquidated damage and jury trial provisions.

The Chamber, on behalf of its approximately 180,000 members, has a strong interest in the ADEA, its enforcement and administration, and any amendments that Congress may consider to this seminal equal employment law. While the Chamber recognizes and appreciates the substantial contributions, experience, and loyalty of our country's most senior workers, it also recognizes the need for consistent, definite, and rational human resource planning and pension policies. The Chamber believes that S. 1054 -- by lifting the age 70 mandatory retirement level now available to employers under federal law -- would disrupt unnecessarily personnel and pension practices and, ultimately, hurt employers and employees.

Therefore, the Chamber must oppose S. 1054 and its House companion bill, H.R. 4154.

II. RETENTION OF THE AGE 70 RETIREMENT CAP IS SOUND PUBLIC POLICY

It is necessary and appropriate that employers -- and employees -- have a structure to deal with the sensitive but inevitable issue of retirement. Under current law, employers have the option of implementing a mandatory retirement policy at age 70 for most workers. Simply to remove this option and, thereby, vitiate the consensus regarding maximum retirement age in our society -- particularly without changes in the jury trial and liquidated damage areas of ADEA -- would subvert this necessary retirement structure, prove disruptive and costly to our society, and insert a great deal of uncertainty into employers' personnel and pension programs.

It is appropriate for employers to have the option of implementing even-handed retirement procedures applicable to all employees at a reasonable retirement age. Seventy is such a retirement age. Employees obviously would continue to have the option of retiring earlier -- as most do -- but employers would retain the ability to maintain fair, systematic, and cost-effective retirement policies and programs.

To lift the age 70 cap, requiring employers to retain older workers indefinitely or show just cause for dismissal, would:

(1) Subject older workers to rigorous performance evaluations, often difficult for employer and employee alike, in anticipation of dismissal. Employers would need to be able to defend against ADEA claims of age discrimination. To require legal justification for such dismissals -- rather than permitting a fixed retirement age -- would force employers to treat a valued long-term employee of 75 the same as a recently hired employee of 25. Such evaluations and dismissals would be far less desirable than a dignified retirement at a set age.

(2) Accelerate dismissal of older workers. Under current law, employers sometimes "carry" older workers with diminished skills in anticipation of a date-certain retirement at 70. If no date-certain retirement is available, and the employer knows that he or she must show just cause whenever the older employee is dismissed, virtually no incentive exists to retain the 67- or 68-year-old employee who has ceased to be sufficiently productive but chooses to work indefinitely. Faced with the prospect of carrying an unproductive employee for an additional 15 years, instead of two or three, the employer may have no choice but to dismiss -- rather than carry -- older workers with diminished skills. Thus, lifting the cap may, in fact, shorten the careers of many older workers, in contravention of the intentions of the proponents of S. 1054.

(3) Disrupt current personnel and pension practices and planning throughout our economy. Companies' personnel and pension planning would be thrown into disarray; exact formulas and timetables would be substituted by guesswork; and recruitment, training, and promotion plans would be complicated.

(4) Contradict the retirement provisions of many long-term collective bargaining agreements and, thereby, require protracted and disruptive renegotiation by the union and management in areas already fully resolved and bargained for in good faith. Despite Section 3 of S. 1054, a provision that delays the bill's effective date to

accommodate the provisions of some labor contracts, S. 1054 would create conflicts with many labor contracts. Many collective bargaining agreements are longer than the three years the bill assumes or, in fact, have no set expiration date. Such labor contracts would have to be reopened simply to deal with the retirement ramifications of S. 1054, despite the facts that (1) such provisions freely were bargained for in the give-and-take of labor-management relations with concessions being granted by one or both sides in order to fashion the current retirement policy and (2) reopening such contracts to renegotiation may permit disputes in other areas to arise and, thereby, further the possibility of labor unrest.

(5) Disadvantage promotional opportunities for younger employees. Eliminating the mandatory retirement age of 70 would frustrate employers' efforts to retain valued, but less senior employees who, with no predictable opportunities for promotions may feel obliged to seek employment elsewhere. Failure to be assured of openings at predictable intervals also can impede efforts to recruit prospective employees.

(6) Frustrate affirmative action programs and exacerbate the already higher unemployment rate of minorities and women. Retention of large numbers of older workers, particularly at the management level which, in some industries, is disproportionately white and male, would hinder hiring and promotional opportunities for minorities and women — for whom entrance to these jobs in large numbers has been more recent. With reduced turnover in the work force, there would be a corresponding cutback in affirmative action programs,

(7) Increase substantially the number of age discrimination suits in our already overcrowded courts. Protracted jury trial litigation is expensive, time-consuming, and subject to abuse. Lifting the cap expands the number of potential plaintiffs with ADEA claims, and the threat of such litigation may cause employers — even those employers totally convinced of their own position on the merits -- to settle out of court. ADEA claims, which already have increased dramatically in recent years, would be likely to increase even further if the retirement cap were removed because of an increase in the number of potential plaintiffs and because of the expected response of some employers to increase dismissals for cause.

(8) Reduce productivity. To the extent employers are discouraged from retiring employees whose performance is deteriorating, productivity is clearly undermined. Businesses need the flexibility to manage effectively and to be as productive as possible, particularly in light of the strong challenge from foreign competition and the recent recession in our country, which left many industries financially troubled. Faced with the prospect of costly and protracted court battles and the handicap in such legal efforts of plaintiffs being able to obtain jury trials and liquidated damages, many employers simply may surrender. Rather than confront unproductive employees, many employers may tolerate such lack of productivity to the ultimate detriment of the company, its shareholders, its customers and its employees at large.

(9) Eliminate the useful psychological function of mandatory retirement policies. One of the advantages of a single retirement age is that it permits every worker to accept retirement without feelings of discrimination. With a mandatory retirement age, businesses do not have to tell some employees that they can continue to work while telling their coworkers that they must go. Under a set retirement policy, all workers would retire at the same age with dignity, pride, and the sense that their many years of service truly are appreciated.

(10) Impair on-the-job safety and health. Older people may suffer diminished physical and mental capacity, thereby becoming a threat to their own health and safety and that of their coworkers and the public if their careers are extended excessively. Lapses of memory, diminished hearing, reduced mobility and agility, and deteriorating vision are among the common characteristics of old age that can jeopardize older workers' ability to maintain safe and healthful work procedures or unnecessarily create life-threatening situations in the workplace.

(11) Cost jobs. By delaying turnover and the creation of new job opportunities through the "ripple" effect, lifting the age 70 retirement cap ultimately would cost jobs.

III. THE NEED TO MAKE THE ADEA CONSISTENT WITH OTHER EQUAL EMPLOYMENT LAWS BY ELIMINATING JURY TRIALS AND LIQUIDATED DAMAGES.

The ADEA is a hybrid law, reflecting the influences of both Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000(e) et seq. ("Title VII"), and the Fair Labor Standards Act, 29 U.S.C. 201 et seq. (the "FLSA"). The objectives of the ADEA, elimination of discrimination from the workplace, parallel Title VII. However, the enforcement mechanism of the ADEA is modeled after the FLSA.

In fact, from its passage in 1967 until a reorganization implemented by the Carter Administration in 1979, enforcement authority for the ADEA and the FLSA resided with the Secretary of Labor. In 1979, the ADEA enforcement authority was shifted to the Equal Employment Opportunity Commission (the "EEOC").

When the ADEA and the FLSA were administered at the Department of Labor, there was at least some logic for having the same enforcement mechanism. However, once the enforcement of the ADEA was transferred to the EEOC, the same logic that supported the transfer supported -- and continues to support -- the revision of the enforcement procedures.

The purpose of the FLSA is to enable plaintiffs to recover through a monetary judgment the wages that they were underpaid. Conversely, the purpose of an antidiscrimination statute is to abate discriminatory employment practices and to provide equitable relief. Yet, by adhering to a FLSA jury trial and liquidated damage legal mechanism, the ADEA differs from all other antidiscrimination statutes.

The Chamber believes that what is appropriate as an individual's remedy for discrimination based on race, sex, or national origin also is appropriate as a remedy for discrimination based on age.

Jury trials have tended to create extraordinarily large verdicts. Three employees of a California department store were awarded $1,297,000 by a jury in 1981. The "deep pocket" assumptions of juries inevitably increase the risk of windfall verdicts when an elderly employee faces a large corporation in court.

Such verdicts encourage the filing of claims. The possibility for double back pay, unlikely to be available under conciliation, discourages out-of-court settlements and, thereby blocks court calendars and forces higher legal expenses.

There is no justification for providing double damages for ADEA verdicts when they are unavailable in other employment discrimination cases. Similarly, there is no justification for jury trials under ADEA when Title VII has been enforced effectively for more than 20 years without jury-trial litigation.

Furthermore, ADEA jury trials and liquidated damages in situations when multiple claims are filed or bifurcated Title VII trials conducted with separate proceedings on liability and damage issues are unnecessarily expensive, duplicative, and burdensome to the court systems.

The ADEA is now a vehicle for large -- and oftentimes undeserved -- recoveries by plaintiffs. The purpose of the law remains as valid as it ever was. However, the enforcement of the law, largely because of the jury trial and liquidated damages provisions, has become decidedly inequitable to employers. The hope for large awards in a context where juries tend to have a bias in favor of the plaintiffs has spurred misuse of the ADEA. It should not be considered an opportunity for aged employees to benefit unjustifiably; it should be considered a law equitable to both employees and employers and consistent in its application with other civil rights statutes.

The ADEA's jury trial and liquidated damages provisions do not enhance employment opportunities for the elderly on their merits. However, an ADEA plaintiff's right to a jury trial and liquidated damages does have the effect of filling our courts with more and longer litigation that is less likely to be meritorious, less likely to be settled, and more likely to be appealed.

Equity can be accomplished only through elimination under ADEA of jury trials and liquidated damages and retention of the age 70 retirement cap.

The Chamber also supports other appropriate changes in the ADEA: (1) federal preemption of state age discrimination laws, (2) codification of the current regulatory exemption for "bonafide employee benefit plans," and (3) broadening of the exemption for policymaking executives. (Congress recently moved in the opposite direction by adopting a narrowing amendment to the Older Americans Act of 1984, which was enacted in October 1984.)

If Congress considers amending the ADEA, the Chamber believes that it is appropriate that each of these proposed changes be considered carefully and adopted.

IV. THE LIABILITY CRISIS RAMIFICATIONS OF LIFTING THE RETIREMENT AGE CAP.

Lifting the age 70 retirement cap would have significant ramifications on our country's current battle to limit runaway liabilities. In our increasingly litigious society, we face an already substantial liablity crisis. S. 1054 would expand appreciably the liabilities of employers by broadening the spectrum of potential plaintiffs. This is especially troublesome given the availability of higher recoveries based on liquidated damages and the tendency for juries to base decisions in this area on their own emotional responses to plaintiffs' situations rather than a reasoned, dispassionate view of whether a violation of the law has been committed.

Congress should weigh carefully any legislative action that would contribute to -- rather than limit -- our nation's liability crisis.

V. CONCLUSION

The age 70 mandatory retirement cap makes sense -- it is fair to employers and employees, allows for a dignified retirement at a set age, and permits the business community to implement sound, predictable, and consistent personnel and pension programs. For these reasons, the age 70 mandatory retirement cap of the ADEA should be retained, and the Chamber respectfully urges the Senators on the Special Committee on Aging and the Senate as a whole to oppose S. 1054, The Age Discrimination in Employment Amendments of 1985.

However, Congress should amend the ADEA in order to make it consistent with Title VII and all other antidiscrimination laws by eliminating the ADEA's jury trial and liquidated damages provisions. Such changes in the law not only would be consistent but also would be equitable for employers and employees alike.

The Chamber of Commerce of the United States is the world's largest federation of business companies and associations and is the principal spokesman for the American business community. It represents approximately 180,000 businesses plus several thousand organizations, such as local/state chambers of commerce and trade/professional associations.

More than 91 percent of the Chamber's members are small business firms with fewer than 100 employees, 57 percent with fewer than 10 employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business--manufacturing, retailing, services, construction, wholesaling, and finance--numbers more than 12,000 members. Yet no one group constitutes as much as 29 percent of the total membership. Further, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the 56 American Chambers of Commerce Abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross section of its members serving on committees, subcommittees and task forces. Currently, some 1,800 business people participate in this process.

Chairman HEINZ. Mr. de Bernardo, I will have some more questions for you later, but your testimony strikes me as really in amazing conflict with the stories of four people we have just heard from.

We heard from one gentleman who says his ability to work past age 70 allows him to earn a third of his income, keeps him off of welfare, allows him to buy health insurance and maintain a car, keeps him the proud head of the family.

Another is a teacher who simply wants to work 1 additional year in spite of the fact he would earn less money retired than working, because he enjoys teaching and because he apparently does an excellent job, and the parents and students would really like to have him around for another year.

We heard from a third individual who is an accomplished concert violist, whose music you yourself must have enjoyed, and he cited all the other people in his profession, in the other symphony orchestras, where people substantially older than 70 are performing, and he cited the example of some of his former colleagues, one of whom died within a year after having been mandatorily discharged at age 65.

And finally, we heard from the Grumman Corp., that finds that their policy of not having mandatory retirement is not only more humane, but as much or more profitable than other policies.

How can you sit there and say, as you did just a second ago, that mandatory retirement at age 70 is "humane"?

Mr. DE BERNARDO. Well, I do not question that older workers do contribute very much to the business community——

Chairman HEINZ. That is not the issue. The issue is how can you say, given what you have just heard, that a mandatory requirement that workers retire is "humane"? What is "humane" about that?

Mr. DE BERNARDO. Well, I think it can be very difficult for older workers who have diminished skills—the passing of time, the aging process takes its toll—to be forced out of the workplace, where you discriminate between some and others and you say, some must go and some can stay. That is the type of thing that, yes, I think can be psychologically debilitating to workers when you have to cut those hairs and force some people out and keep other people and draw the line.

Some employees, if there were no mandatory retirement age option available to employers, could in fact insist on staying forever. And in fact, employers would be faced with the very difficult situation that, yes, can be very traumatic for all concerned.

I do not doubt that there is trauma involved even in age 70 retirement age, but it is my experience that most employers—the Grumman situation independent of this, which I think is a very laudable situation—but most employers, and certainly we deal with an awful lot, and this policy is very well-reasoned—we have gone through our committee's process on this, we have gone through our board of directors—they feel that, no, the age 70 retirement level is not arbitrary, that in fact it is a consensus age, that it makes sense, and that in fact, overall it is best for the majority of employees.

Chairman HEINZ. Let me just say, I do not know who has the consensus on it. But by every poll, 90 percent of the American people, 9 out of 10, disagree with that so-called consensus.

Isn't this consensus coming from just a small group of people who do not want to inconvenience themselves by having to change their habits?

Mr. DE BERNARDO. Well, no. I would say that the consensus comes from the consensus of the business community itself. Nine out of 10——

Chairman HEINZ. So the business community is right and 90 percent of the American people are wrong?

Mr. DE BERNARDO. No, that is not necessarily what I am saying.

Chairman HEINZ. How is that different from——

Mr. DE BERNARDO. Well, I think that there are other issues once you go below the surface. And superficially, I think that yes, this is a very——

Chairman HEINZ. Let us try one other thing. You may disagree with the characterization that 90 percent of the people agree with this committee, and frankly blocking what is the President's policy, not just simply something I favor.

Let me just ask you this. What proportion of employers, since you have got this consensus among employers, what proportion of employers have abandoned mandatory retirement at age 70?

Mr. DE BERNARDO. Well, I know it is a proportion that is increasing because of activity at the State level. Certainly, there are 20 different States that have taken action in this area.

Chairman HEINZ. I am talking about employers. Do you know what the proportion is?

Mr. DE BERNARDO. Well, yes; employers' hands are forced in those respects.

Chairman HEINZ. What proportion?

Mr. de BERNARDO. I do not have an answer for that.

Chairman HEINZ. I have an answer—50 percent. One-half. So this so-called consensus that you represent represents only half of all the employers and is antithetical to the desires and wishes of 90 percent of the American people. And we live in a democracy.

Mr. DE BERNARDO. My point, Mr. Chairman, was that so many of those employers, their hand was forced; for many of those employers, it was State action that forced them to abandon the mandatory retirement level. And in fact, again, I was impressed with the testimony of the witnesses that came in earlier; I was impressed with their skills. I have no question, for example, that Mr. Levine is a very capable teacher who can continue to teach——

Chairman HEINZ. Is that going to change the mind of the Chamber of Commerce?

Mr. DE BERNARDO. Again, we adopt policies through a set formula. When I say it is a consensus, I am confident it is a consensus, because we go through our Labor Relations Council, through its parent committee, and in fact to our board of directors. And we have revisited this subject just recently, and it is the will of those who are representative of the business community, a very strong cross-section of the business community, virtually every State, virtually every type of industry, big and small. And yes, their consensus—and I am comfortable with this—the consensus of chamber

members is in fact in favor of maintaining that age 70 retirement cap.

Chairman HEINZ. Mr. Fay, excuse me for interrupting the order of the panel. Please proceed with your testimony.

I will have some more questions on some matters of statistical fact for both of you in a minute.

Go ahead, please.

STATEMENT OF RAYMOND FAY, ATTORNEY, LAW OFFICES OF HALEY, BADER & POTTS, WASHINGTON, DC

Mr. FAY. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I will present only a few of my remarks orally and ask that my full prepared statement be included in the record.

Chairman HEINZ. Without objection.

Mr. FAY. My name is Raymond Fay. I am pleased to testify in favor of strengthening the Age Discrimination in Employment Act by removing the age 70 limitation and to testify against weakening the ADEA in other respects.

I am an age discrimination lawyer in private practice here in Washington, DC, predominantly but not exclusively representing plaintiffs.

Age discrimination in employment has been called by our courts "a tragic waste of human resources." It is no less a waste of human resources to discriminate against a productive 70-year-old employee than it is to discriminate against someone who is 50 or 60 years of age.

The right to seek and maintain employment in an environment free from age discrimination justly has also been declared by our courts to be a "civil right." As such, it should be treated no less favorably than other civil rights, without artificial limitations on the ADEA's coverage.

There is no valid argument against removing the ADEA's age cap.

First, society's experience and the results of surveys such as the one you, Mr. Chairman, have referred to—the 1985 survey for AARP—have shattered the myths about lack of productivity and adaptability of older workers.

Second, the alleged need to plan around a chronological end point of employment is dispelled by the continuing trend toward early retirement across a broad range of ages. Why does an employer need to plan for an individual's retirement at age 70 when the same individual may choose to retire at any time over the previous 15-year period without any planning on the employer's part?

Third, the age cap is not justified by the patronizing notion that some employers "carry" unsuitable employees to age 70 and then gracefully retire them. If there is truly a basis for dismissing for cause an employee over age 70, an employer has the same tools under the ADEA to deal with the problem as it does with a 60-year-old. Certainly, this stereotypical argument is no reason for barring thousands of productive workers from the protection of the ADEA.

In considering the removal of the age cap in private employment under the ADEA, Congress should resist the entreaties of some segments of the business community to weaken the ADEA in other respects. I refer particularly to the plea of the U.S. Chamber of Commerce to eliminate the ADEA's provisions for jury trials and liquidated, or double, damages.

There are many reasons why these important provisions should be preserved. Here, however, I would like to focus on the chamber's contention that these provisions give an unfair advantage to ADEA plaintiffs.

Perhaps most misleading is the notion that plaintiffs have an unfair advantage in ADEA cases because of the jury trial provision. In fact, the opposite is true. Defendants win the lion's share of all decided ADEA cases, and the right to a jury trial does not shift that balance.

With the aid of computerized legal research, we searched for ADEA cases decided since 1978 and found 383 cases in which there was a final resolution by court action—that is, either the plaintiff or defendant ultimately won in court, either in the district court or on appeal.

The results show that the defendant wins the vast majority of these cases. Of the 383 cases in which the search turned up a winner or loser, defendant won 284, or 74.2 percent of the cases. In the 200 of those cases which were finally resolved before a trial, defendant did even better, winning 189, or 94.5 percent of them, on motions that occurred before trial.

Among the remainder of the cases which went to trial and were recorded in the search as having been finally resolved, the results were more evenly divided, but the defendant still won a slight edge.

In that latter category, plaintiffs fared better in cases tried before a jury, but not overwhelmingly so. We found 89 such jury cases in the search; the plaintiff won 53 cases, almost 60 percent, and the defendant won about 40 percent.

In summary, if you are a defendant, you have a three in four chance of winning in court in an ADEA case. A little more than one-half of the cases are won or lost before trial, and the defendant wins virtually all of these. Of the cases which go to trial, it is basically a 50–50 proposition, but with a 60–40 edge in plaintiff's favor in jury cases.

Finally, the chamber's criticism of the ADEA's liquidated damages provision is as unfounded as its criticism of jury trials. In the area of liquidated damages, the tilt is clearly in favor of defendant, since the Supreme Court's January 1985 decision in *TWA* v. *Thurston*. A computerized search showed 15 appellate cases in 1985 and 1986 where the court reached a final decision on that liquidated damages issue. In only 2 of the 15 cases were liquidated damages awarded to plaintiff and upheld.

[The prepared statement of Mr. Fay follows:]

TESTIMONY
OF
RAYMOND C. FAY
BEFORE THE
SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE
JUNE 19, 1986

Mr. Chairman and Members of the Committee:

My name is Raymond Fay. I am pleased to testify in favor of strengthening the Age Discrimination in Employment Act (ADEA) by removing the age 70 limitation, and against weakening the ADEA in other respects. I am a lawyer in private practice with the law firm of Haley, Bader & Potts in Washington, D.C. Along with our firm's resident partner in Chicago, Alan Serwer, I direct the firm's employment discrimination law practice. This practice is primarily in age discrimination cases, predominantly but not exclusively on plaintiff's side.

Age discrimination in employment has been called a "tragic waste of human resources."[1/] It is no less a waste of human resources to discriminate against a productive 70-year old employee than it is to discriminate against someone 50 or 60 years of age.

The right to seek and maintain employment in an environment free from age discrimination justly has been declared to be a "civil right."[2/] As such,

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1/ Christie v. Marston, 551 F.2d 1080, 1084 (7th Cir. 1977), quoting 113 Cong. Rec. 34745 (1967) (comments of Rep. Eilberg).

2/ Kennedy v. Whitehurst, 690 F.2d 951, 953 (D.C. Cir. 1982).

it should be treated the same as other civil rights, without artificial limitations on the ADEA's coverage. The late Senator Javits stated it well:[3/]

> It has always seemed unjustifiable to me to permit employees to be forced into retirement solely because they have reached an arbitrarily established age. Mandatory retirement at any specific age fails to take account of differential aging and the effects of aging on different skills. It could waste well-developed abilities and mature judgment which can be of great benefit to society . . . .
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> * * *
>
> Raising the mandatory retirement age gives employees greater freedom to determine whether to retire or continue working. Every day of delay and every exemption from coverage means the denial of the expanded freedom of choice. I for one think our workers deserve the right to decide for themselves when they want to retire.

Besides being more fully protective of the basic rights the ADEA was designed to protect, removal of the ADEA age cap is in accord with other legislative and societal developments. In 1978, Congress lifted the age cap in the ADEA with respect to federal government employment. Recently, Congress removed the age cap on health insurance coverage protection under the ADEA.[4/] Approximately one-third of the states have no age cap in their age discrimination laws. According to a 1985 survey conducted for the American Association of Retired Persons, almost one-half of the companies surveyed support elimination of mandatory retirement, and only 24% of those surveyed have a mandatory

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3/ S. Rep. No. 95-493, 95th Cong., 1st Sess. 31, 33 (1977) (additional views of Sen. Javits).

4/ P.L. 99-272, Section 9201(b), __ Stat. __.

retirement policy.[5/] Elimination of mandatory retirement is also favored by the vast majority of the population as a whole, according to USA Today's 1985 survey.

There is no magic about the age of 70 which precludes a worker from being able to do his or her job. The presence of well over one-half million employees in the U.S. workforce over age 65 is evidence of that. Gerontologists for years have spoken of the 60-75 year age group as the "young-old." As reported by Dr. Nathan Shock:[6/]

> In some variables, individual 80-year old subjects may perform as well as the average 50-year old . . . . Because of the high degree of specificity of aging among different subjects and among different organ systems, chronological age itself is not a very reliable predictor of performance in individual adults.

The current Director of the National Institute of Aging of the National Institutes of Health, T. Franklin Williams, M.D., recently reported to the Congress that, because of "continued advances in both medical technology and research in aging, we have considerably more knowledge and understanding of health and functional ability beyond the age of 60 now than we did even a few years ago." Dr. Williams stated that in studies among healthy persons who have received the benefit of modern medical technology to screen out disease conditions, overall "functioning may be well maintained at least to age 80 and quite possibly longer." Even for the job of commercial airline pilot, Dr. Williams concluded that "age is not a rational

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5/ Yankelovich, Skelly and White, Inc., "Workers Over 50: Old Myths, New Realties," pp. 17-18.

6/ Shock, N., Normal Human Aging: The Baltimore Longitudinal Study of Aging, National Institutes of Health Publication No. 84-2450 (Nov. 1984), p. 207.

nor reliable criterion for determining whether or not a pilot's medical and functional condition are such that he/she should be permitted to continue in service."7/

There is no valid argument against removing the ADEA's age cap. First, experience and the results of surveys such as the 1985 survey for AARP have shattered the myths about lack of productivity and adaptability of older workers. Second, the alleged need to "plan" around a chronological endpoint of employment is dispelled by the continuing trend toward early retirement across a broad age range. Why does an employer need to "plan" for an individual's retirement at age 70 when the same individual may choose to retire at anytime over the previous 15-year period without any "planning" on the employer's part? Third, the age cap is not justified by the patronizing notion that some employers "carry" unsuitable employees to age 70 and then gracefully retire them. If there is truly a basis for dismissing for cause an employee over age 70, an employer has the same tools under the ADEA to deal with the problem as it does with a 60-year old. Certainly, this stereotypical argument is no reason for barring thousands of productive workers from the protection of the ADEA.

In considering removal of the ADEA age cap in private employment, Congress should resist the entreaties of some segments of the business community to weaken the ADEA in other respects. I refer particularly to the baseless cry of the U.S. Chamber of Commerce to eliminate the ADEA's provisions for jury trials and liquidated (double) damages.

7/ "Age Discrimination and the FAA Age 60 Rule," Hearing Before the House Select Comm. on Aging, 99th Cong., 1st Sess. 11-12 (1985).

Even before enactment of the 1978 ADEA amendments which clarified the right to a trial by jury in an ADEA case on "any issue of fact," 29 U.S.C. § 626(c)(2), the Supreme Court had ruled that a plaintiff is entitled to a jury trial in ADEA actions for lost wages. Lorillard v. Pons, 434 U.S. 575 (1978). The Supreme Court did not reach the question of whether a jury trial in an ADEA is required by the U.S. Constitution, as the Fourth Circuit had so decided. 549 F.2d 950 (1977). So even if Congress were to take the unnecessary and ill-advised step to delete jury trials from the ADEA, a jury trial in ADEA cases still may be mandated on constitutional grounds.

The more fundamental question is: why tamper with a legislative scheme that Congress arrived at after careful deliberation and with purposeful compromise in adopting the Fair Labor Standard Act's remedial scheme? Why tamper with a legislative scheme that has worked well in almost twenty years of practice? Indeed, it has worked much more successfully for employers than employees, as shown below.

The Chamber has unfairly charged that ADEA jury trials "have tended to create extraordinarily large verdicts." As an example, the Chamber has cited Cancellier v. Federated Department Stores, 672 F.2d 1312 (9th Cir. 1982), cert. denied, 459 U.S. 859. Yet, that case reveals that the ADEA portion of the verdict represented only plaintiffs' actual losses in wages and benefits, plus liquidated damages authorized by the statute.

The damages available under ADEA are limited to lost wages and associated amounts owing. Almost every court has rejected the award of punitive damages in ADEA cases. Almost all federal courts of appeals have precluded the

simultaneous award of liquidated damages and prejudgment interest in an ADEA case. If a jury makes a large award not based on the evidence, it can and should be overturned or reduced. That is the rule of law in any civil case. Why the furor over applying the same centuries-old principle under the ADEA?

The Chamber has raised a most preposterous hypothetical example in opposition to ADEA jury trials. It says that an employer is faced with a Hobson's choice when there are two equally qualified employees who are candidates for layoff -- a white male over 40 and a woman or minority under 40. It says that the employer really has no choice but to retain the white male, because the ADEA provides for jury trials and liquidated damages. I know of no case in which an employer defended a layoff decision on the basis of assertedly being caught between the Scylla of ADEA and the Charybdis of Title VII in this manner. Even if such a situation did come up, it would be hard to envision an employer not contending that the better performer was retained. In real life, however, a wise employer under the strain of an economic cutback would make the decision by drawing up a list of legitimate job-related criteria and weighing the respective merits of the two employees -- not by fretting over an imaginary damages tab two or three years down the line.

The Chamber also has stated that the ADEA's provisions for jury trials and liquidated damages "tie up the courts." In truth, the courts are "tied up" for reasons beyond anyone's control, but certainly not because an ADEA plaintiff has a right to a jury trial. In our experience, if there is any one factor that ties up the courts in ADEA cases more than others, it is discovery disputes. Since the defendant typically has possession of more relevant documentation and

information than plaintiff, it is more often than not defendant's resistance to discovery that ties up the courts. Sanctions against the offending party and its attorneys are the cure for that, not elimination of the right to a jury trial.

Perhaps most misleading is the notion that plaintiffs have an unfair advantage over defendants in ADEA cases because of the jury trial provision. In fact, the opposite is true. Defendants win the lion's share of all decided ADEA cases, and the right to a jury trial does not shift the balance.

With the aid of computerized legal research, we searched for ADEA cases decided since 1978 in which there was a final resolution by court action, that is, where either plaintiff or defendant ultimately won in court. Some were ultimately won or lost in the district, or trial, court; some were ultimately won on appeal. We found 383 such cases in all. The results of the search are set forth in summary form in Appendix A.

The results show that the defendant wins the vast majority of these cases. Of the 383 cases in which the search turned up a winner or loser, defendant won 284, or 74.2% of the cases. Plaintiff won 99, or 25.8%.

In the cases which were finally resolved before trial, defendant did even better. 200 cases, or slightly more than half (52.1%) fall into this category. Of those 200 cases, defendant won 189 of them -- or 94.5% -- on motions to dismiss or motions for summary judgment. Plaintiff won 11 on summary judgment motions (5.5%).

Among cases which went to trial and were recorded in the search as having been finally resolved, the results were more evenly divided, with defendant

winning only a slight edge. 183 cases were in this category. Plaintiff won 90 (49.2%) and defendant won 93 (50.8%).

Plaintiffs fared better in cases tried before a jury, but not overwhelmingly so. The search turned up 89 jury cases (see Section II.B. of Appendix A). There were more jury cases in the total cases surveyed, but search limitations and expense precluded more detailed inquiry. I have no reason to believe that a more detailed inquiry would have substantially altered the percentages, however. Of the 89 jury cases, plaintiff won 53 (59.6%) and defendant won 36 (40.4%). As a footnote, I should mention that most of these cases were not actually concluded by a jury verdict. 74 of the 89 jury cases (83.1%) were not finally decided until appeal. By contrast, of the 200 final decisions before trial, 139 (69.5%) were resolved finally in the district court.

In summary, if you are a defendant, you have a 3 in 4 chance of winning in court in an ADEA case. A little more than one-half of the cases are won or lost before trial, and defendant wins virtually all of these. Of the cases which go to trial, it's basically a 50-50 proposition, but with a 60-40 edge in plaintiff's favor in jury cases.

The Chamber's criticism of the ADEA's liquidated damages provision is as unfounded as its criticism of jury trials. In the area of liquidated damages, the tilt is clearly in favor of defendant since the Supreme Court's January 1985 decision in TWA v. Thurston, 105 S.Ct. 613. A computerized search showed 15 appellate cases in 1985 and 1986 where the court reached a final decision on the liquidated damages issue. In only 2 of the 15 cases were liquidated damages awarded to plaintiff and upheld.

APPENDIX A
TO
TESTIMONY OF RAYMOND C. FAY

Computerized Search Of ADEA
Cases In Which A Final Resolution
Was Reached, 1978-June 15, 1986

Summary: Total number of cases in which a final resolution was reached -- 383

Won by defendant -- 284 (74.2%)
Won by plaintiff -- 99 (25.8%)

Final resolution prior to trial -- 200 cases

Won by defendant -- 189 (94.5%)
Won by plaintiff -- 11 (5.5%)

Final resolution of cases tried -- 183 cases

Won by defendant -- 93 (50.8%)
Won by plaintiff -- 90 (49.2%)

Final Resolution of jury cases (Section II.B., below) -- 89 cases

Won by defendant -- 36 (40.4%)
Won by plaintiff -- 53 (59.6%)

I. Cases In Which A Final Resolution Was Reached Prior To Tria

	Plaintiff	Defendant
A. Motions to Dismiss		
1. District Court		
a. Defendant's motion granted		42
2. On Appeal		
a. Defendant's Motion granted below, affirmed		4
b. Defendant's Motion denied below, reversed		1

	Plaintiff	Defendant
B. Motions for Summary Judgment		
1. District Court		
a. Plaintiff's motion granted	8	
b. Defendant's motion granted		89
2. On Appeal		
a. Plaintiff's motion granted below, affirmed	1	
b. Plaintiff's motion denied below, reversed	2	
c. Defendant's motion granted below, affirmed		53
TOTALS	11	189
II. Cases Tried In Which A Final Resolution Was Reached		
A. Motions for a New trial and/or Motions for Judgment Notwithstanding the Verdict (JNOV)		
1. District Court		
a. Defendant's motion denied	13	
b. Defendant's JNOV motion granted		3
c. Plaintiff's motion denied		5
2. On Appeal		
a. Defendant's JNOV motion granted below, affirmed		1
b. Defendant's JNOV motion denied below, reversed		1
B. Jury Verdict or Judgment (excluding cases in I. and II.A. above)		
1. District Court		
a. For plaintiff (10 of these cases designated by search as jury cases)	20	
b. For defendant (5 designated as jury)		28

	Plaintiff	Defendant
2. On Appeal		
a. For plaintiff below, affirmed (27 designated as jury)	34	
b. For defendant below, reversed (16 designated as jury)	21	
c. For defendant below, affirmed (15 designated as jury)		36
d. For plaintiff below, reversed (16 designated as jury)		21
TOTALS	90	93
GRAND TOTALS	99	284

Chairman HEINZ. Mr. Fay, does that complete your testimony?

Mr. FAY. That completes my oral testimony, yes, sir.

Chairman HEINZ. Very well. I found your statistics on the success of defendants, as you mentioned, quite in contrast to Mr. de Bernardo's testimony.

Mr. de Bernardo, what do you say to those statistics that the defendants usually do quite well?

Mr. DE BERNARDO. I think that is accurate. I think defendants do quite well. I think that is a comment in terms of the merit of many of the claims that are filed under the Age Discrimination in Employment Act.

Now, there are other statistics as well, statistics the chamber has testified in regards to in the past, and I think there is quite a catalog of cases in which there have been very, very sizable jury awards, many of which have been reversed on appeal. And at any rate, we feel the fact that the Age Discrimination in Employment Act is inconsistent to all other antidiscrimination laws in both of these respects, I think, does create problems.

I think that inconsistency with all the other laws that are enforced by the EEOC; it is certainly inconsistent with title VII, the fact that title VII has been in existence for more than 20 years and never had a jury trial provision. That liquidated damages provision, one thing that it does create, it does create, we believe, as we point out in our testimony, the filing of more marginal cases, because there is the possibility of recoveries that are going to be much more sizable, and in fact, if you want to take a look at other statistics, not statistics found on a search of some computer, but statistics provided by the Government, by the EEOC itself, you will find that in fact, the settlement rate in ADEA cases as opposed to title VII cases is just over 50 percent in title VII. So it is almost twice as much that it would be settled out of court on EEOC cases under title VII than they would be under age discrimination in cases.

Now, why is that that they are less likely to settle? Because of the possibility of liquidated damages and the prospect of a jury trial being more favorable to the plaintiff.

Chairman HEINZ. Mr. Fay, do you want to respond to that? He is saying that all these cases are settled because of jury trials——

Mr. FAY. He is saying that an ADEA case is less likely to be settled because of the provision for liquidated damages. But when parties settle a case, they compromise their controversy. There is usually no public record as to why the case was settled. By the same token, when a defendant refuses to settle a case with a plaintiff, we do not know why the case is going to go to trial. The flip side of this, of course, is that, because of the growing number of age discrimination cases, there are potentially more age discrimination violations which are being uncovered. But there is no way to know one way or the other when you settle a case why the case was settled. It is a private matter between the two parties. They settle their case so that their controversy will not be aired in public.

Mr. DE BERNARDO. Well, nonetheless, I would say that there is a huge discrepancy in the settlement rate of ADEA cases vis-a-vis title VII cases. That is a fact. That is a fact provided by the EEOC, Government statistics. And furthermore, the statistics provided by

Mr. Fay in regards to the defendants winning cases, I think, suggest the fact that there are more cases that are brought to trial under the Age Discrimination in Employment Act which are of marginal merit. That is what it suggests to me.

Chairman HEINZ. Mr. de Bernardo, Mr. Fay states that the right to seek and maintain employment in an environment free from age discrimination justly has been declared a civil right and that the Age Discrimination in Employment Act should be free of artificial limitations on coverage.

Now, you have given us a whole raft of reasons why you do not like all that. What is the most important one?

Mr. DE BERNARDO. The most important reason why the cap should be maintained?

Chairman HEINZ. No; why his maintenance that being free from age discrimination in employment is a civil right and should not be limited; why is that notion incorrect?

Mr. DE BERNARDO. Well, the purposes of our antidiscrimination laws and all other antidiscrimination laws are to eradicate discrimination in the workplace. I think that is appropriate. And in fact, the remedies that are available are make-whole remedies.

Now, when the ADEA was passed, historically put in perspective, it was given to the Secretary of Labor for enforcement. And the enforcement mechanism which was adopted was one that was similar to the Fair Labor Standards Act. The focus of that is not make-whole remedies. The purpose of that is to provide for monetary damages——

Chairman HEINZ. I am not asking for a legalistic argument. I am asking a question of values.

Mr. DE BERNARDO. OK.

Chairman HEINZ. Is being free from discrimination because of age a civil right or not, or is it something else?

Mr. DE BERNARDO. I would say yes, it is a civil right. I think it is appropriate.

Chairman HEINZ. It is a civil right. Now, should we constrain civil rights? Should we say that it is not all right to discriminate on the basis of religion unless someone is a Moslem, that it is not all right to discriminate on the basis of color unless someone is green, that it is not all right to discriminate on the basis of age unless someone is age 70 or over; what is the difference?

Mr. DE BERNARDO. Well, there is a difference in that I think that although civil rights are obviously extremely important to all of us and should be safeguarded, that there does come a time when there is a balancing of the equities involved in all parties concerned. And as we have tried to point out in our testimony, we feel that the age 70 mandatory retirement cap that is available on an optional level to employers is not in fact arbitrary and it is appropriate, it is well-reasoned, and makes sense.

Chairman HEINZ. Do you think that older workers can compete equally in the job market when they are forced to retire at age 70?

Mr. DE BERNARDO. I would think not.

Chairman HEINZ. Mr. Fay, it has been stated that lifting the age 70 cap, removing it, will deny employers the opportunity to recruit young talent.

Do you believe that companies currently without mandatory retirement, and all companies after lifting the cap, will face that obstacle to success?

Mr. FAY. No, sir, because otherwise companies that have voluntarily abandoned mandatory retirement policies would have returned to the prior practice. The AARP survey shows that 75 percent of the companies surveyed had no mandatory retirement practice, and half of the surveyed companies were in favor of eliminating all mandatory retirement. I do not think it is correct, as was implied here, to state that all of those abandoned mandatory retirement because some State law forced them to. A lot of these companies abandoned mandatory retirement because they found it was sound business practice.

Chairman HEINZ. Which companies come most readily to mind in that category?

Mr. FAY. The survey that I am referring to was anonymous.

Chairman HEINZ. Now, I know that one of the arguments against eliminating mandatory retirement is that it will particularly impact companies that need more younger, technically trained people, companies that are in the research and high-technology area—it is alleged. Well, three companies that are certainly in that category—indeed, they are among the three largest—IBM, Polaroid, and as we heard a moment ago, Grumman—those are not "slouches" when it comes to high-technology. They need young people coming into those companies with the best brains and with the best ideas, because they are research-based companies, and they have voluntarily eliminated mandatory retirement.

Mr. de Bernardo, what do you have to say to that?

Mr. DE BERNARDO. Well, you know, mandatory retirement level is, of course, somewhat of a misnomer. It is not mandatory. It is optional for employers to implement that policy if they feel that it fits their own program or is necessary to their own program.

I think it is fine for companies to have that flexibility and if in fact their pension and personnel practices permit this, that is fine.

But I would like to stress that—not the poll that was done by AARP of employers, in which there is much less of a direct nexus between AARP than there would be from the chamber of commerce or the National Association of Manufacturers, but we have polled our members, and we have gone out, and so has the NAM, and we have not arrived at this position lightly.

Frankly, I share concerns, concerns that you have and many others, that our position is the right one. We wanted to really delve in and see what the business community felt about this. And I am convinced, and I am here to convey to you that I am convinced, and that in fact, we have looked at this very carefully, that we have in fact polled members, that we have in fact gone through our committee process and our board of directors, and we are confident that, yes, the business community feels that this is appropriate, that the ADEA remains unchanged in regards to the retirement cap.

Mr. FAY. Senator, just so there is no misunderstanding here, the AARP survey was in fact an independent survey conducted by the consulting firm of Yankelovitz, Skelley, and White; it was not done in-house at AARP.

Chairman HEINZ. One last question, Mr. de Bernardo. Do you contend, does the chamber contend, that removing the age 70 cap would cost younger workers jobs?

Mr. DE BERNARDO. Well, it prevents the creation of new job opportunities. I think that is pretty obvious. The extent that you do not have that turnover at that age and those jobs being vacated, and of course, there are not those jobs to be filled once again. But of course, when you have retirements, particularly among——

Chairman HEINZ. Do you have any statistics to show that where people have been retired at age 70 because of the cap, that their jobs have been filled by new entrants into the work force?

Mr. DE BERNARDO. No, that is not an area where we have or where it will be feasible to keep statistics. I think it is——

Chairman HEINZ. Well, you just said, though, you just testified before a congressional committee, that that is the way it is. Are you testifying without any factual basis?

Mr. DE BERNARDO. No. I would say that some things, we can stipulate or make assumptions about. I think it is safe to assume that Mr. Levine's eighth grade class will need a teacher. I think it is safe to assume that the Philadelphia Orchestra will need a viola player.

Chairman HEINZ. Yes, but Mr. Granat testified that the Philadelphia Orchestra would probably look around most of the time and hire an experienced violist.

Mr. Fay, do you have any light to shed on this issue?

Mr. FAY. The amount of attrition through early retirements, simple departures, terminations for cause and other reasons, is much, much greater than the small percentage of people who are forced to retire at age 70, or if the law passed, would be allowed to stay on. So to look at this tiny, tiny segment of the work force and say that they are the cause is not an accurate assumption.

Second, it is very, very unlikely that a seasoned employee who has been there for many years, whether in a high management position or in a production job, is going to be replaced immediately, one for one, by a new hire. That is just not the way it works.

Mr. DE BERNARDO. No, but the way it does work, particularly the more senior positions, is that you have people that you have been grooming for those positions—you have valued employees that you are trying to retain, that you make promises that yes, we have in mind that in 2 years or in 3 years or in 18 months, you are going to be ready for this spot. There is the training process that is involved because the employer does not want to skip a beat in terms of productivity and efficiency, and there is the ripple effect.

Very often, again, now, we are talking about more senior positions, but to the extent that the position is created in management or in upper management, you may have two or three or four or five promotions which occur. Very often, they do occur from within.

Chairman HEINZ. So what you are saying——

Mr. DE BERNARDO. So eventually, you are going to hire one person to come in at somewhere along the ladder to fill that job that has been empty.

Chairman HEINZ. So what you are saying is that for the convenience of the top managers of a handful of large corporations, we should force someone who works for the Allegheny County Park

system to retire; we should force a concert violist to retire; we should force a schoolteacher to retire, because it makes it easier for the people in the corporate suites to play their game of musical chairs.

Mr. DE BERNARDO. No, that is not at all what I am saying.

Chairman HEINZ. That is what you just said. I am characterizing it harshly because I think it deserves to be characterized harshly.

What do you think you just said?

Mr. DE BERNARDO. Well, respectfully, Mr. Chairman, I do not think that is what I said.

Chairman HEINZ. Well, this is what you said. What you said was that by requiring people at the top to move out, there is a ripple effect, and it allows the people who have been told, "You are going to get promoted in 2 or 3 years," to move up, and you do not lose them via some headhunter someplace else. That may be true. It may be a legitimate concern for the people in the executive suites.

And I do not doubt that all the committees that you work with or serve on are composed of upwardly mobile top management types from all over the United States; and they are setting policy for schoolteachers and musicians and workers.

Does that seem right to you?

Mr. DE BERNARDO. Well, our position seems right to me, if that is the question. Respectfully, I have to say it is not a matter of convenience. It is one factor. The question was does it cost jobs. Yes, it does.

Chairman HEINZ. Mr. de Bernardo, I understand your position. You are here, representing a position of the chamber, and I know that you have to represent it faithfully. I do not know whether or not it really represents how you feel, and by you, I really do mean the chamber. You have made that position clear.

Let me just ask you one last question. The President of the United States supports removing the cap on age 70 in terms of retirement. The chamber is opposed to the President of the United States, Ronald Reagan, on that issue. Is that right?

Mr. DE BERNARDO. That is correct.

Chairman HEINZ. OK. Thank you very much.

Mr. DE BERNARDO. Thank you, Senator.

Chairman HEINZ. Mr. Fay, thank you.

Gentlemen, I appreciate your time.

Mr. FAY. Thank you, Mr. Chairman.

[Whereupon, at 11:50 a.m., the committee was adjourned.]

APPENDIX

MATERIAL RELATED TO HEARING

Item 1

WORKING AMERICANS: EQUALITY AT ANY AGE

A Staff Report

Special Committee on Aging
United States Senate
John Heinz, Chairman

June 19, 1986

(97)

PREFACE

The report herein addresses a federal policy that goes against the grain of our free enterprise system and undercuts a fundamental tenet of civil rights -- the Age Discrimination in Employment Act that permits forced retirement of American workers solely on the basis of age.

Mandatory retirement at age 70, like discrimination based upon race, religion or sex, contradicts the well-established principles of freedom of choice and of job opportunity based on individual ability. But for at least half of the Nation's workers, mandatory retirement looms as an ominous shadow at the end of their careers.

We found that numerous national surveys show that mandatory retirement is nearly universally opposed by the American public.

We found that forced retirement results in the loss of income and status for older workers, the loss of experience and skills for the workforce, and in economic loss to the Nation as a whole from the loss of productivity and diminished contributions to retirement systems.

Despite the economic and social costs, the law persists and condones the very practice of discrimination it was intended to eliminate. In turn, age discrimination appears to be on the rise. Since 1971, there has been a 100 percent increase in age discrimination charges.

While half of corporate America has erased mandatory retirement from the rule books -- and 13 states have abolished an upper age limit for protection from age discrimination -- the rise in the number of ADEA charges attests that much more must be done before older workers are provided fair opportunities in employment and retirement.

Last May, I introduced S. 1054, the "Age Discrimination in Employment Amendments of 1985," to remove the age 70 "cap." Similar legislation has been introduced by Rep. Claude Pepper (D-FL) in the House. Elimination of mandatory retirement will not end age discrimination, but it will guarantee individual freedom of choice.

JOHN HEINZ
Chairman

WORKING AMERICANS: EQUALITY AT ANY AGE?

Staff Report
Senate Special Committee on Aging
John Heinz, Chairman

EXECUTIVE SUMMARY

BACKGROUND:

Enacted to rid the workplace of age bias in 1968, the Age Discrimination in Employment Act (ADEA) spawns the most clear-cut form of age discrimination by allowing forced retirement after age 70. The law permitting employers to use years over achievement as a basis for retirement flies in the face of widespread public approval to assure equality at any age.

Age discrimination charges represent the fastest growing category of claims filed with the Equal Employment Opportunity Commission in recent years. In 1985, there were 16,784 age-related charges filed, up 11.8 percent from 1984. Since 1971, there has been a 100 percent increase in age discrimination charges.

While half of corporate America has erased mandatory retirement from the rule books -- and 13 states have abolished an upper age limit for protection from age discrimination -- the rise in the number of ADEA charges attests that much more must be done before older workers are provided fair opportunities in employment and retirement.

Numerous obstacles rooted in age discrimination serve to hinder older worker employment in this society:

- negative stereotypes about aging and productivity;
- job demands inconsistent with the needs of older workers;
- policies, such as early retirement, encouraging early withdrawal from the workforce.

Demographic trends suggest that the issue of age discrimination will become increasingly critical as the workforce grays. Increases in life expectancy, coupled with the aging of the baby boom generation, will lead to a Nation 50 years from now in which one in five Americans will be retired. At the same time, declining numbers of younger people entering the labor force threaten labor shortages for the future.

WHAT ARE THE COSTS OF AGE DISCRIMINATION?

Unemployment is a particularly serious problem for those older people who have to work. Older workers who have lost their jobs have more difficulty in finding a new job and stay out of work longer than younger persons. The unemployed between ages 55 and 64

had an average of 26.2 weeks of unemployment in 1984, compared to 16 weeks for workers age 20 to 24. Often older workers become "discouraged workers" and drop out of the unemployment statistics, forced into early, involuntary retirement.

Besides economic hardship, studies show that forced retirement can have a deterimental effect on a person's physical, emotional, and psychological health.

WHY HASN'T MANDATORY RETIREMENT BEEN ABOLISHED?

The abolishment of mandatory retirement rules enjoys nearly universal support from the American public according to many national surveys. Nevertheless, the upper age limit for ADEA protections remains at 70.

Those who argue for the status quo claim that mandatory retirement preserves the dignity of older worker who are no longer capable of performing their jobs and who would otherwise be singled out for discharge. Senator Heinz and other proponents of abolishing mandatory retirement maintain that dignity is best preserved by granting American workers the freedom of choice about when to retire as a basic civil right. A person should be judged on ability and not on age since age is not a measure of fitness for a job.

Opponents also claim that moving out older workers makes room for younger workers who don't have the income potential of retirees receiving pensions and Social Security. In fact, older workers do not compete with younger workers for jobs since they usually hold positions requiring higher levels of experience.

Forced retirement results in the loss of income and status for older workers, the loss of experience and skills for the workforce, and in economic loss to the Nation as a whole from the loss of productivity and contributions to retirement systems.

Other issues which play a part in the mandatory retirement debate hinge on changes proposed to technical provisions in current law, whether special exemptions should be included for university professors and police and firefighters, and if ADEA protections for hiring and promotion should be retained if the cap is lifted.

STAFF RECOMMENDATIONS:

On May 2, 1985, Senator Heinz introduced the "Age Discrimination in Employment Amendments of 1985" (S. 1054) to remove the maximum age limit of 70 for employees covered under ADEA. If the "cap" were lifted, the Department of Labor estimates that an additional 200,000 workers would participate in the labor force -- or a five percent increase in workers age 65 and over. The Heinz bill does not grant any exemptions for special groups, such as public safety officers or academicians, nor does it make any other changes in current law beyond elimination of the cap.

STAFF REPORT ON MANDATORY RETIREMENT

I. INTRODUCTION

Numerous obstacles to older worker employment exist in our society. These include: (1) negative stereotypes about aging and productivity; (2) job demands and schedule constraints which are inconsistent with the skills and needs of older workers; and (3) policies which make it undesirable to remain in the labor force, such as early retirement incentives and discontinued pension credits. Several of these have their roots in age discrimination.

Today, age discrimination in employment is widespread. There is no agreement on the exact nature of the problem, nor is there a consensus on how to solve it. Few, however, disagree that the problem is real and that it affects the lives of millions of Americans. Despite Federal legislation to ban most forms of age discrimination from the workplace, most Americans believe that age discrimination remains a serious problem.

The most clearcut form of age discrimination is mandatory retirement rules. In 1978, the Age Discrimination in Employment Act was amended to eliminate mandatory retirement for nearly all Federal workers and to increase to 70 the age at which non-Federal workers could be forcibly retired. According to a recent Department of Labor study, 51 percent of the Nation's work force faced an arbitrary mandatory retirement age in 1980, usually age 70. Mandatory retirement rules are subsiding, but they persist for a variety of reasons. Many employers perceive older workers as a group to be ill-suited for certain jobs because of declining mental and physical capacity, an inability to learn, a lack of creativity, and inflexibility. Vast amounts of research on the abilities of older workers, however, consistently refute these employer-held stereotypes.

Currently, there are 1.1 million Americans age 70 and over in our work force. Many of these people want to continue working -- sometimes for reasons of self-fulfillment, but more often for reasons of economic necessity. Federal law now deprives these people of the same guarantees of equal opportunity in employment that other citizens enjoy. They are deprived of this protection not on the basis of who they are and what they can do, but solely on the basis of their age. This is the rankest form of discrimination. Age, like race, sex, religion, and national origin, is a protected category under Federal statutes. Eliminating age bias in the workplace is consistent with a tradition in America of struggle against arbitrary policies which discriminate against individuals because of their basic beliefs or their personal characteristics. Age discrimination is unfair and we should rid our society of it. The issue is one of basic civil and human rights.

In addition to the compelling civil rights arguments for the elimination of forced retirement, there are sound economic arguments for increasing the labor force participation rates among older workers. Age discrimination is not only a threat to the well-being of older individuals, but it also undermines the economic stability of the Nation's retirement income systems and, to a lesser extent, the larger economy as well. Age discrimination reduces the work efforts of older people, encourages premature labor force withdrawal, and increases the load on an already burdened Social Security system and on private pensions. Without adequate solutions to the problems of age discrimination and without incentives to encourage more older workers to remain employed longer, the Nation could be facing a serious economic as well as social crisis in the future.

Mandatory retirement remains an unnecessary and unjustified obstacle to older workers and is an abridgement of their right to remain contributors to the American economy. Elimination of mandatory retirement will not end age discrimination, but it will give older workers something the Founding Fathers placed the highest value on: Individual citizen choice. It will give them the right to continue to work if they want to and the freedom of choice to decide when they want to retire.

II. THE AGE DISCRIMINATION IN EMPLOYMENT ACT

In order to encourage equal employment opportunities for older persons, Congress enacted the Age Discrimination in Employment Act (ADEA) in 1967, which became effective on June 12, 1968 (Public Law 90-202). Specifically, the ADEA was enacted "to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; and to help employers and workers find ways of meeting problems arising from the impact of age on employment." The act currently prohibits employment discrimination against persons aged 40 to 70. These limits were chosen to focus coverage on workers especially likely to experience job discrimination because of their age. The upper age limit was originally set at 65 because it was the common retirement age in U.S. industry and the normal eligibility age for full Social Security benefits. The act specifies that actions otherwise deemed unlawful may be permitted if they are based upon the following consideration:

> Where age is a bona fide occupational qualification (BFOQ) reasonably necessary to normal operations of a particular business;
>
> Where the differentiation is based on reasonable factors other than age;
>
> To observe the terms of a bona fide seniority system or a bona fide employee benefit plan such as a retirement, pension, or insurance plan, with the qualification that no seniority system or benefit plan may require or permit the

involuntary retirement of any individual who is covered by the ADEA; and

Where an employee is discharged for good cause.

In addition, an executive or high-ranking, policymaking employee in the private sector entitled to annual private retirement benefits of at least $44,000 could be compulsorily retired at age 65, simply because of age. This is known as the "executive exemption" and it was designed to allow turnover at the top levels of the organization. While it has strong support among business leaders, recent evidence shows that it is used only infrequently by a small number of employers.

The Equal Employment Opportunity Commission (EEOC), which enforces laws prohibiting discrimination, has reported a 100 percent increase in age-related claims since 1971. In 1985, there were 16,784 age discrimination charges filed, up 11.8 percent from 1984. During 1985, the Commission filed 96 lawsuits under the Age Discrimination in Employment Act -- an increase of almost 50 percent over the 67 actions filed in 1984. This is the largest number of ADEA lawsuits filed by the Federal Government in any one-year period since the ADEA was enacted in 1967, and surpasses the prior record of 89 lawsuits filed in FY 1981.

It appears that age discrimination complaints will only continue to rise. The recession caused employers to search for easy ways to reduce their payrolls and to bring in younger, less expensive workers. In firms where younger workers were already laid off, further reductions had to come from older workers. Plant closings have also resulted in large numbers of displaced older workers. In addition, companies anxious to accomodate the baby-boom generation will come under increasing pressure to find vacancies for them.

III. EMPLOYER PRACTICES AND PUBLIC ATTITUDE

A. Employer Practice

The precise number of workers subject to mandatory retirement on the basis of their age is not known. According to the U.S. Department of Labor, in 1980, about half the U.S. labor force worked in organizations having mandatory retirement age of 70, while the remainder faced no mandatory retirement. (Final Report to Congress on Age Discrimination in Employment Act Studies, U.S. Department of Labor, 1982).

A recent survey of 114 firms by the Bureau of National Affairs found that over one-third (36%) have a mandatory retirement age and large firms are more likely to have mandatory retirement policies than small firms (41% and 31%, respectively). Only 6% of responding firms encourage older workers to work beyond retirement age and only 2% retrain their older workers. Twenty four percent of the companies responding to an AARP survey

had mandatory retirement policies - and these, too, were more prevalent among large firms. Finally, the most recent new beneficiary survey taken by the Social Security Administration shows that 12% of recipients lost their jobs and 5% were compulsorily retired.

B. Public Attitudes

There is nearly unanimous support for the full elimination of mandatory retirement. A survey of the general population by Louis Harris and Associates for the National Council on Aging found that close to 90 percent of those interviewed agreed with the statement, "Nobody should be forced to retire because of age if he wants to continue working and is still able to do a good job." Only 37 percent agreed that "Older people should retire when they can to give younger people more of a chance on the job." A survey released in January 1985 by USA Today showed that 70 percent of Americans disapprove of mandatory retirement. Close to half of companies responding to an AARP survey support the abolishment of mandatory retirement, with smaller firms showing greater support for the concept. The nearly unanimous opposition to mandatory retirement policies by the American public is one indicator of the strong sentiment against arbitrary age bias in employment.

Organizations for the aged and others in favor of eliminating mandatory retirement argue that judging a person's qualification for a job solely on the basis of age, without regard to fitness for a job, is inequitable and that chronological age alone is a poor predictor of ability to perform a job. Other arguments for eliminating mandatory retirement include: (1) Older workers discriminated against may lose income; (2) the loss of status associated with the loss of a job may result in the deterioration of mental and physical health for the older person; (3) the loss of skills and experience from the work force due to mandatory retirement results in a loss to our Nation's productivity and gross national product (GNP); and (4) allowing workers to stay on their job longer helps the financial status of the Social Security and other retirement systems because payment of full retirement benefits is deferred until a later age and continued contributions will flow into these programs.

Employers and others in favor of retaining mandatory retirement note that older persons, as a group, may be less well suited for some jobs than younger workers because declining physical and mental capacity are found in greater proportion among older persons and because they do not learn new skills as easily as younger persons. Other arguments against eliminating mandatory retirement include: (1) Mandatory retirement preserves the dignity of the older worker who is no longer capable of performing his or her job adequately, and who would otherwise be singled out for discharge in a personally damaging proceeding; (2) mandatory retirement provides a predictable situation

allowing both management and employees to plan for the future; (3) older workers can often retire with Social Security or other retirement income, making jobs and promotions available to younger workers who do not have other income potential; and (4) by opening up jobs, mandatory retirement also provides more opportunities to women and minorities who are under-represented in certain occupations.

The Reagan administration's support for legislation to abolish mandatory retirement has been inconsistent. In April 1982, the President endorsed the elimination of mandatory retirement, saying, "When it comes to retirement, the criterion should be fitness for work, not year of birth. We know that many individuals have valuable contributions to make well beyond 70 years of age and they should have the opportunity to do so if they desire." Soon after that statement was made, however, administration officials testified in hearings that the administration supports legislation that will end mandatory retirement and eliminate the age 70 cap for all personnel actions, except hiring and promotion. The only rationale given was that when individuals are hired or promoted to new responsibility, companies frequently make investments in them which they expect to be amortized over a longer period of time than may be possible with an older worker.

IV. DEMOGRAPHIC AND EMPLOYMENT TRENDS

Demographic trends indicate that age discrimination issues will become increasingly important. The first trend is the greater life expectancy at birth in our Nation. During the 20th century, the average life expectancy in this country has moved from under 50 to over 70. This longevity will test the economy's capacity to use the added labor potential. The second great trend is the aging of the enormous cohort of 76.4 million persons born between 1946 and 1964. The critical years of the baby boomers retirement will start about 2010. By 2030, there will be over 50 million retirees, twice today's 65-and-over population. Where one in eight Americans are elderly today, the ratio in 50 years will be about one in six.

A third demographic trend is emerging. In about five years or so, the number of young people entering the labor force will drop from the yearly average of about 3 million entrants during the late 1970's to about 1.3 million a year. This is because the baby-boom generation has been ensconced in the job market for some years, and a lower birth rate has resulted in a declining number of future workers.

Experts predict that the low birth rates that started two decades ago could produce low unemployment rates and even labor shortages for some time to come. According to expert sources, the wholesale and retail trade and service industries employ 60 percent of all older workers, and 70 percent of the overall projected increase in employment through 1990 is expected

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to occur in professional and technical, clerical, and service occupations. The decline in the younger labor force may produce demand for entry-level positions which might be filled, not by young workers, but by older workers, especially women, who need or want to return to work.

Despite these trends, employment and retirement policies in the United States have been directed toward encouraging early retirement. For example, Social Security was developed during the Great Depression, in part, to ease a sufficient number of older workers out of the labor force to make room for younger workers. Similarly, nine out of ten private pension plans offer financial incentives for early retirement. When these programs are combined with employer administered mandatory retirement policies, a highly competitive work force, and rapidly changing technologies, it is not surprising that few older persons remain employed after their 65th birthday.

The statistics on older worker employment are startling. According to the Bureau of Labor Standards, the labor force participation of older men has been dropping dramatically during the last 30 years. Almost half of all men age 65 and over worked in 1950. By 1984, less than a sixth (16.3%) were working. In contrast, the labor force participation of older women has held relatively steady. About 10 percent of women age 65 and over worked outside the home in 1950. By 1984, the percentage had dropped to only 7.5 percent. It is widely held that more elderly women are in the labor force because their economic status is lower than men's. Three-quarters of all new Social Security beneficiaries each year retire well before their 65th Birthday, and most begin collecting benefits at age 63. A July 1985 General Accounting Office (GAO) study found that almost half of the individuals who receive private pensions start receiving them by age 62 and almost 60 percent start receiving them before reaching 65.

The future economic security of older Americans is jeopardized by early labor force withdrawal. Those who do not work are three times more likely to fall below the poverty level. Earlier retirement also contributes to the financial strain on Social Security and private pension plans. While the number of people getting maximum social security benefits is increasing, most retirees get less than the maximum. Census Bureau data for 1985 shows that of the 26 million people aged 65 and over in that year, over 17 million had an annual income of less than $10,000 from all sources. The average annual social security benefit paid to a couple is $9,768.00, less than $4,000.00 above the official poverty level income for an elderly couple. Only slightly more than half of Americans currently in the work force are covered by a private pension plan and most people 65 and over do not have substantial holdings in savings, stocks, insurance policies and bonds.

Serious shortages of skilled labor may develop in certain industries unless the early retirement trend is reversed. It appears, however, that labor demand is not yet sufficient to satisfy older persons' current employment needs. Filling labor shortages with older workers would improve the economic status of older adults and their families, and increase economic growth.

V. OLDER WORKER PRODUCTIVITY

The emergence of discriminatory employment practices for older workers can be traced to the late 1800's in the United States. There is some evidence that in the late 1800's, negative attitudes about the capacities and productivity of the aged were already common throughout the Nation. The development of retirement as a social pattern in industry may have served to enhance and legitimize employment discrimination practices despite early evidence that older workers were capable, conscientious, and productive employees.

More recently, two nationwide surveys by Louis Harris & Associates -- one in 1975, the other in 1981 -- found nearly identical results; 8 out of 10 Americans believe that "most employers discriminate against older people and make it difficult for them to find work." The perception of widespread age discrimination held by the public is shared by a majority of business leaders. Most employers believe age discrimination exists, according to a 1981 nationwide survey of 552 employers conducted by William M. Mercer, Inc. The following key points summarize the survey's findings:

61 percent of employers believe older workers today are discriminated against in the employment marketplace;

22 percent claim it is unlikely that, without the present legal constraints, the company would hire someone over age 50 for a position other than senior management;

20 percent admit that older workers (other than senior executives) have less of an opportunity for promotions or training; and

12 percent admit that older workers' pay raises are not as large as those of younger workers in the same category.

The pervasive belief that all abilities decline with age has fostered the myth that older workers are not as efficient as younger workers. This myth has no basis in fact. While it is clear that we have not yet succeeded in changing the attitude that older workers hinder management efforts to improve productivity, there is growing recognition of the value of older workers.

A study by Waldman and Avolio, published in the February 1985 issue of the Journal of Applied Psychology, revealed little

support for the "somewhat widespread belief that job performance declines with age." The researchers found a strong correlation between performance improvements and increasing age, especially in objective measures of productivity. They found that "although chronological age may be a convenient means for estimating performance potential, it falls short in accounting for the wide range of individual differences in job performance for people at various ages." Using chronological age as a bona fide occupational qualification for employment decision making, they said, is most likely a mistake from a legal, ethical, and organizational effectiveness perspective.

Employers' attitudes may be changing to more accurately reflect reality. Employers report that older workers stay on the job longer than younger workers. They are also perceived to offer experience, reliability and loyalty. An AARP survey of 400 businesses in 1985 revealed that, in general, older workers are perceived very positively, and that they are particularly valued for their experience, knowledge, work habits and attitudes. The survey showed that, contrary to popular belief, employers give older workers their highest marks for productivity, as well as for attendance, commitment to quality and satisfactory work performance. A surprising 90% believe that older workers are cost-effective and the overwhelming majority believe that the cost of older workers is justified when their value to the company is considered.

Corporate age discrimination can result in loss of valuable experience, mature judgment, and priceless job know-how. Attitudes toward older workers are changing, but as the rise in the number of ADEA charges filed attests, much more must be done to provide fair opportunities in employment and retirement for older workers.

VI. ECONOMIC AND SOCIAL COSTS OF AGE DISCRIMINATION

A. Economic Costs

According to a 1986 report of the National Commission for Employment Policy, several million older workers suffered severe labor market problems (low income and unemployment or underemployment) in 1980. Unemployment is a particularly serious problem for those elderly persons who have to work for economic reasons or who desire to stay active. In 1984, the unemployment rate for the elderly was 3.3 percent. Of Americans age 60 and over, 315,000 were out of work in 1984; 97,000 of these were age 65 or over. These numbers are not large compared to younger age groups, but because duration of unemployment is longer among older workers and discouraged older workers are not included in these statistics, the official unemployment rate is not an accurate indicator of the seriousness of the problem.

Older workers who have lost their jobs have more difficulty in obtaining other jobs and stay out of work longer than younger

persons. In fact, persons age 55 to 64 have the longest spells of unemployment of any group in the country. Unemployed individuals aged 55 to 64 had an average of 26.2 weeks of unemployment in 1984, as compared to 16 weeks for workers age 20 to 24.

According to the Bureau of Labor Standards, because an older worker is likely to be unemployed for a longer period than a younger employee, he or she is also more likely to exhaust available unemployment insurance benefits, thereby suffering economic hardships. Additionally, the Employment and Training Report of the President (1978) states that the problems of older unemployed workers are worsened by the fact that many persons over forty-five may still have significant financial obligations.

Discouraged workers are those who report that they want a job but are not looking because they believe that they cannot find one. There is evidence that the longer periods of unemployment experienced by older workers often lead to early, involuntary retirement as they quit searching for employment and become "discouraged" workers. Older workers disproportionately experience labor market discouragement. For men age 65 and over, the annual average level of discouraged workers is almost as large as the number of unemployed. The Bureau of Labor Statistics reports that the prospects of an older male worker finding work are so low that he is three times more likely to become discouraged and withdraw from the work force than younger workers.

Writing for the May 1983 Monthly Labor Review, Rones, an economist with the Division of Employment and Unemployment Analysis, Bureau of Labor Standards, states that when older people are asked what are the reasons you are not looking for work, older people predominantly cite personal reasons in finding a job — particularly that employers think that they are "too old." Rones believes that this may reflect a realistic perception of the lack of acceptable job opportunities for persons age 65 and older who want to work. Finally, when older workers are fortunate enough to find work, they generally face a cut in earnings in a new job and suffer a decline in status compared to their previous employment. Following retirement, many people experience financial difficulties because of decreased income which often accompanies retirement, difficulty in finding reemployment, longer life spans, erosion of fixed pensions by inflation, and reduced private pension benefits as a result of forced retirement.

B. Social Costs

Medical evidence suggests that mandatory retirement can have a detrimental effect on a person's physical, emotional, and psychological health. It may even effect his or her life span. According to the American Association of Retired Persons, people who retire unwillingly don't fare so well -- 30% of the country's

retirees are believed to suffer serious adjustment problems. Psychologists report that older workers face wrenching psychological stress -- their hopes are shattered, they are depressed and frustrated.

According to a study in the British Medical Journal (Richard Smith, November 1985), suicide rates are higher among the unemployed than among the employed and there is good evidence that unemployment causes deterioration in mental health. Further, the mental health of most people suffers during periods of unemployment and continues to deteriorate as the time without work continues.

One court has even recognized the harsh psychological effects of age discrimination as "a cruel blow to the dignity and self-respect of one who has devoted his life to productive work, and can take a dramatic toll." Rogers v. Exxon, 404 F. Supp. 324 (D. N.J. 1975), rev'd 550 F.2d 834 (3d Cir. 1977), CERT. DENIED, 434 U.S. 1022 (1978).

VII. LEGISLATION TO ELIMINATE AGE DISCRIMINATION

On May 2, 1985, Senator Heinz introduced S. 1054, the "Age Discrimination in Employment Amendments of 1985," to remove the maximum age limitation (age 70) for employees covered by the ADEA. According to the Department of Labor, projections indicate that the complete elimination of mandatory retirement would result in an additional increase in labor force participation of approximately 200,000 workers. This represents an additional five percent increase in workers age 65 and over. Thus, elimination of mandatory retirement age, while helpful to thousands of individual older persons who wish to remain employed, will have only a marginal impact on the overall labor force no greater than the impact of raising the mandatory retirement age from 65 to 70. According to the House Select Committee on Aging, uncapping the ADEA would add approximately 840,000 workers age 70 and over to the 28 million workers (aged 40 to 70) now covered by the Act. This would be a three percent increase in the number of individuals protected against age discrimination in employment.

It has been argued in the past that eliminating mandatory retirement entirely would unfairly prevent younger people from moving up the job ladder. A DOL study has shown, however, that abolishing mandatory retirement would not result in displacing women and members of racial minorities. The Labor Department found that the rise in permissible mandatory retirement age to 70 resulted in only negligible effects on women, minorities, and youth, and that abolishing mandatory retirement would have a similarly minimal impact. The Labor Department studies also refute the idea that an increased number of older workers would significantly delay promotions for younger workers. One study reported by the House Select Committee on Aging states that a ten percent increase in the labor force participation rates of men

age 65 and over would delay, on average, promotions at the highest ranks by only one-half year, while at the lower ranks individual promotions would be retarded by approximately five to ten weeks. Similarly, simulations conducted by The Urban Institute suggest that the fear that eliminating the mandatory retirement age altogether would seriously affect job opportunities for younger workers is unfounded.

There is little evidence that a glut of older workers is holding back younger ones. The percentage of older Americans who choose to continue working continues to decline. Government statistics for November 1985 show that only 11 percent over 65 are still working. Renowned economist, John Kenneth Galbraith has said that we should not "accept the common argument that retirement is necessary to make room for younger newcomers; there is no fixed limit on the number of employable men and women in the economy. Also, one Court rejected as discriminatory the rationale of "creating advancement opportunities for younger people." In Bradley v. Vance, the court stated: "However, an interest in recruiting and promoting younger people solely because of their youth is inherently discriminatory and cannot provide a legitimate basis for the statutory scheme."

VIII. ISSUES SURROUNDING MANDATORY RETIREMENT

The key political issues in the debate over mandatory retirement have little to do with the merits of the issue. Instead, the debate hinges primarily on five related concerns: Each of these is discussed below.

1. Jury Trials

Section 7 of the ADEA incorporated the enforcement scheme used in employee actions against private employers under the Fair Labor Standards Act (FLSA). In Lorillard v. Pons, the Supreme Court found that the incorporation of the FLSA scheme into Section 7 indicated that the FLSA right to trial by jury should also be incorporated in the ADEA. The Lorillard holding was codified in 1978 when Section 7(c) was amended to provide expressly for jury trials in actions brought under that section. Thus, the 1978 amendments expressly confer a right to a jury trial and the legislative history indicates that it was viewed as an important incentive for voluntary compliance.

Many employers argue that the right of an aggrieved worker to have a trial by jury of his peers should be taken away, allegedly because juries are too sympathetic to older workers. The Labor Policy Association has said that a judgment for or against the plaintiff should be based upon a reasoned, dispassionate view of whether a violation was committed under the law as written. Companies say that too often such judgments are instead based on a jury's emotional response to a plaintiff's situation. Companies also feel that the right to a jury trial does little, if anything, to promote the effective employment of

older people -- but simply provides windfall benefits to those who bring suit.

There is no clear-cut evidence that juries are more sympathetic to aggrieved older workers than are judges. A recent study by Barbara Fosberg, in which 239 ADEA cases were analyzed, indicates that jury verdicts show no bias toward plaintiffs. And a 1984 analysis of age cases by Shuster and Miller revealed that employers have been victorious in 63% of the ADEA actions and that plaintiffs have seen their pre-1979 rate of success (33%) only slightly improved since 1979 -- limiting the impact of the 1978 jury trial amendment. There is also the important protection for the employer of judgment notwithstanding the verdict, whereby a jury award can be reversed upon appeal. Without jury trials, plaintiffs in age discrimination cases would be severely disadvantaged and the enforcement mechanism of the act would be greatly undermined.

In contrast to the FLSA, there is no right to trial by jury in cases arising under Title VII of the Civil Rights Act, which prohibits discrimination on the basis of race, color, sex, religion, or national origin. Employers argue that age discrimination cases should not be treated differently. Supreme Court Justice Brennan found this argument unpersuasive, saying "the Court has previously said that, despite important similarities between Title VII and the ADEA, it is the remedial and procedural provisions of the two laws that are crucial and there we find significant differences."

2. Liquidated Damages

Under the ADEA, a prevailing plaintiff is entitled to liquidated damages in cases of willful violations. The liquidated damages provision of the ADEA imposes double liability (usually backpay) to provide an effective deterrent to willful violations. Liquidated damages decrease and deter future violations by encouraging employers to enforce the Act, since they may think twice if double damages loom ahead.

In practice, courts limit the amount of liquidated damages awarded to benefits specified in the ADEA and they generally do not allow additional amounts for punitive damages, pain and suffering, or damages for emotional distress. Thus, liquidated damages are important because judges are reluctant to order job reinstatement or monetary awards beyond the date of the decision, even though the plaintiff may continue to experience problems securing appropriate employment. The availability of double damages also encourages conciliation because it shifts some of the bargaining power from the employer to the employee and may make employers more willing to settle. As employers try to achieve the most cost-effective solution to minimize their losses, the spur to conciliation may be strengthened rather than impaired by the liquidated damages provision.

In the past, however, employers have supported proposals to eliminate liquidated damage awards under the ADEA. Employers feel that make-whole relief is adequate regardless of the nature of the discrimination. In addition, many companies have suggested that the availability of liquidated damages has discouraged settlements, hindering the informal resolution of such suits.

According to the Labor Policy Association, the standard of willfulness is so low that liquidated damages are routinely awarded in ADEA litigation. It should be noted, however, that a ruling by the Supreme Court in Transworld Airlines, Inc. v. Thurston in January 1985, rejected lower court interpretations that a violation is willful if the employer knew that the ADEA was "in the picture," and held that a violation is "willful" if "the employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the ADEA." The action by the Supreme Court in adopting this single standard allows all courts to follow a uniform guideline in deciding ADEA liquidated damages claims. This standard provides protection for employers against the arbitrary imposition of liquidated damages. At the same time, it encourages employers to know about the ADEA and to try to discover whether their actions will violate the Act before they take the actions.

3. Academic Exemption

Employees of colleges and universities came under the protections against age discrimination in employment by way of the 1974 amendments to the ADEA. During consideration of the 1978 amendments, however, the question arose: what would the effect of raising the age limit from 65 to 70 years would have upon tenure agreements between schools and colleges and their teachers? After much negotiation, Congress decided to exempt tenured faculty members from the extended protection of age 70 until July 1, 1982. Prior to that date, tenured faculty could be refused employment, discharged, or forced to be retired after reaching age 65. The temporary exclusion incorporated in the 1978 act applied only to faculty members employed under a tenure system.

There are numerous arguments both in favor of and in opposition to providing a similar or longer exemption if the age 70 cap is lifted. In fact, this has become an issue of much debate within the educational community. According to testimony before the Senate Labor and Human Resources Committee, faculty and higher education administrators are generally in agreement in seeking a permanent exemption for any uncapping of the mandatory retirement age for tenured faculty. The American Federation of Teachers (AFT), which represents more college faculty members than any other national organization, and reportedly the National Education Association (NEA), oppose such exemptions for faculty. The Department of Labor recommends a temporary exemption for faculty at age 70, if the age cap is

lifted for others, to allow Colleges and universities time to evaluate retirement trends. Some of the debate regarding the academic exemption follows.

It has been argued that in order to properly evaluate the legitimacy of an academic exemption from mandatory retirement laws, one must grapple with the principal question: should the uniqueness of the tenure system earn it special treatment under the law? And is there sufficient evidence that the mandatory retirement of tenured faculty serves the national interest to the extend that we should allow the relinquishment of individual rights of employment?

There is not a great deal of controversy whether the tenure system is different from many other employment situations. It is unique in that after a probationary period and acceptance into a tenure position, there is a great deal of security and independence, and some would argue that faculty will enjoy a good income upon retirement. Tenure protects academic freedom by prohibiting dismissals except under specific conditions. Many administrators suggest that without a defined end to this employment, through the tenure contract and by way of the mandatory retirement age, educational institutions would, for a number of reasons, be forced to end the tenure system and these protections to academic freedom and excellence.

The claim has been made that without mandatory retirement at age 70, institutions of higher education will not be able to continue to bring in "fresh blood" or intellectual surge needed to maintain excellence. It is argued that planning for the institution and its faculty needs would be undermined by the increase in otherwise retired faculty which would occur if the age 70 cap were to be lifted. In other words, the older faculty members would prohibit the institution from hiring younger teachers who, with their current state of knowledge, are better equipped to serve the needs of the school. Further, the argument has been made that allowing older faculty to teach or research past the age of 70 denies the already limited number of positions from women and minorities.

Does the continued employment of older faculty really erode the vitality of the academic enterprise? There are several important flaws in the above viewpoints. To begin, there is not sufficient data to prove that the abilities and contributions of older faculty decline with age. Faculty are not less valuable to academics simply because they have reached the age of 65 or 70. In fact, the implication that younger faculty are more productive than older faculty was well reputed by the landmark study of the products of scholars, scientists and mathematicians, and of those in the fine arts. The study was published in the Journal of Gerontology in 1966 by Wayne Dennis, and in essence, found that productive work can continue into one's 70's and beyond. And in many cases productivity is greater in one's 70's than in one's 20's.

In addition, Allen D. Calvin, Ph.D. of the University of San Francisco has written about the numerous occasions he has witnessed where outstanding faculty members were forced to retire against their will. Such actions can lead to a loss of important leadership in the academic setting, and can have negative impact on students who lose their advisors and mentors. Forced retirement can also have a significant impact on the atmosphere in the educational environment.

Are older faculty a bad risk because of their health? In a paper published by the Association of the Bar of the City of New York, Oscar Ruebhausen writes: "At some point in the aging process, impaired functioning becomes so great a risk that it is reasonable for an employer to be unwilling to assume it; and unreasonable for society to insist that employers be subjected to it." Yet, almost in the same breath, the author concedes that chronological age tells us very little about the performance capability of particular individuals who may be quite capable of performing in the academic community simply because our general knowledge tells us that older adults experience more health related problems than younger persons? Common sense, the many examples of healthy older Americans, and the value we place on individual rights, tell us the answer is no.

With regard to those who hypothesize that older faculty keep minorities and women from acquiring faculty positions, there is little proof. In fact, statistical information gathered at Stanford University and analyzed in a paper by Allen Calvin suggests that even with mandatory retirement and initiatives to hire more minorities and women, there was only a slight change in the percentage of minority and women faculty on the tenured track and holding tenured faculty positions, but there is no definitive link to keeping older faculty employed.

Those in opposition to lifting the mandatory retirement cap for faculty often believe that performance appraisals are not a better criterion for ending service than age. It is suggested that relying on the evaluation of individual faculty performance to determine the fate of older faculty leaves out the needs of the department, institution, and the students. Ironically, the use of appraisals instead of mandatory retirement was labeled as age discrimination by one exemption supporter.

Those opposed to the use of evaluation techniques for faculty also testified that the burden of proof would be too heavily placed on the institution to establish a lack of capacity. Further, it is argued that it would be extremely difficult to identify and quantify the needed data. In addition to being unpleasant, such a task is considered by some to be too time consuming and expensive for the institution.

On the other hand, there are also those who believe that evaluation and appraisals are such an ingrained element of academic institutions that their use with regard to continued

employment would not be devastating. In fact, some universities have proposed subjecting tenured faculty to periodic review regardless of age.

In conclusion, there are numerous financial, political, and institutional reasons to support an exemption from the lifting of the mandatory retirement age 70 cap for tenured faculty. There are also sound arguments against treating faculty differently than other individuals who simply want to work until they are ready to retire. There are those who will maintain that a sensible system must try to meet the general concerns and the normal situations rather than the variations, and that institutional goals are more important than individual need. The question remains: is the tenure system so unique that society should overlook its discrimination against older workers?

4. State and Local Police and Firefighters

As earlier noted, the ADEA allows an exception against age discrimination in the workplace where "age is a bona fide occupational qualification reasonably necessary to the normal operation of a particular business, or where the differentiation is based on reasonable factors other than age." The bona fide occupational qualification (BFOQ) defense has been most successful in cases that involve public safety. In general, courts have allowed maximum hiring ages and mandatory retirement ages for bus drivers and airline pilots, and, on occasion, police officers and firefighters because the safety of the public was at stake. In general, courts have upheld age as a BFOQ when employers were able to demonstrate that all or nearly all workers beyond a specified age could not perform safely of effectively, or that individual testing of workers was either impractical or insufficiently developed. As a result, individual testing policies and procedures to replace age restriction policies in public safety occupations have recently gained attention. The courts, however, have been inconsistent and the lack of clear judicial guidance has prompted calls for reform.

The issue of whether public safety officers should be treated like other employees under the ADEA also gained attention after the Supreme Court, on March 2, 1983, in EEOC v. Wyoming, determined that the State's game wardens were covered by the ADEA. Many states and localities have mandatory retirement age policies below age 70 for public safety officers and are concerned about the impact this decision will have. As a result, legislation has been introduced to exempt public safety officers from some or all of the ADEA provisions.

Supporters of such legislation argue that the mental and physical demands, and safety considerations for the public, the individual, and coworkers who depend on each other in emergency situations, warrant mandatory retirement ages below 70 for these state and local workers. Sponsors of the legislation believe that it would be difficult to establish that a lower mandatory

retirement age for public safety officers is a BFOQ under the ADEA because of conflicting court decisions; and even if possible, would require costly and time consuming litigation. They question the feasibility of individual employee evaluations, and some have sighted the difficulty involved in administering the tests because of technological limitations concerning what human characteristics can be reliably evaluated, the equivocal nature of test results, and economic costs.

Those opposed to exempting safety officers from the ADEA note that age affects each individual differently, and they say there are tests that can be used to measure the effects of age on individuals, including those that measure general fitness, cardiovascular condition, and reaction time. They cite research on the performance of older law enforcement officers and firefighters which supports the the conclusion that job performance does not invariably decline with age and research shows that there are accurate and economical ways to test physical fitness and predict levels of performance for public safety occupation. All that the ADEA requires is that the employer make individualized assessments where it is possible and practical to do so. The only fair way to determine who is physically qualified to perform police and fire work is to test ability and fitness.

Mandatory retirement and hiring age limits for public safety workers are repugnant to the letter and spirit of the ADEA, which was enacted to "promote employment of older persons based on their ability rather than age" and to "prohibit arbitrary age discrimination in employment." It was Congress' intention that age should not be used as the principal determinant of an individual's ability to perform a job, but that this determination, to the greatest extent feasible, should be made on an individual basis. Maximum hiring age limitations and mandatory retirement ages conflict with this intent because they are based on notions of age-based incapacity and do not consider an individual's potential or job performance.

5. Hiring and Promotion

Age discrimination, whether it is in promotion, whether it is hiring, or whether it is in retirement, is a violation of an individual's civil rights, and it is a principle that should be fully reflected by law. Legislation introduced by Senator Heinz would lift the age 70 cap with regard to forced retirement and all other terms and conditions of employment. No distinction is made between the people already employed and the people seeking employment and seeking promotion.

In contrast, the Administration supports lifting of the age 70 cap with respect to discharge, but not with respect to hiring and promotion decisions. The Administration has taken this position, in part, because it believes that when individuals are hired or promoted to new responsibility, companies very

frequently make investments in them which they expect to be amortized over a longer period of time. Employers also fear an increase in age bias lawsuits if the age 70 cap were lifted with respect to hiring and promotion.

Although it is reasonable to believe that persons hired at younger ages will work longer and therefore be a better investment, this economic consideration cannot be the basis for the age discrimination. It should also be made clear that businesses can always dismiss elderly workers who are incapable of performing a particular job. According to DOL, only 3 1/2 percent of all the complaints filed at EEOC concerned hiring and promotion. The vast majority of complaints were for other personnel actions such as discharge and retirement. Thus, it appears that older workers withstand many forms of age-based employment discrimination - bringing suit only in cases of separation. Employers need not, therefore, fear significant increases in age claims.

Finally, a strong argument can be made that Congress would violate the equal protection component of the Fifth amendment due process clause if it enacted the legislation that did not cover hiring and promotions. In essence, such legislation would create two classes of persons who are age 70 and over -- one composed of those who are currently employed and are not seeking new work, and the other composed of those who are seeking new work (regardless of whether they are currently employed or unemployed). Individuals in the former group would be protected against age-based employment discrimination; individuals in the latter group who are seeking new positions or promotions would not be protected by the provisions of the ADEA. No logical principle forms the basis for the classification -- Congress would apparently arbitrarily choose to presume that workers who are over a particular age are competent as long as they are employed in a particular job, but incompetent if they seek promotion to a higher position or seek employment with a new employer and the classification does not rationally further the purposes which the ADEA was enacted to serve -- "to promote employment of older persons based on their ability rather than age."

A March 1985 report by the National Commission for Employment Policy showed that "older job seekers were considerably less likely to receive job referrals than younger job seekers," due to dissimilar treatment and the lack of appropriate employment opportunities. There is no good reason that age discrimination should continue for Americans over 70 who are looking for work or for a promotion, and end only for those who have a job and who don't care to advance. This is particularly so where Congress found that older workers are "disadvantaged in their efforts to retain employment and especially to regain employment when displaced from jobs."

II. STATE LAWS

During the past decade, the United States has moved closer toward nationwide elimination of mandatory retirement. In addition to the Federal role in banning mandatory retirement through the ADEA, many states have acted to end this form of age discrimination, either by way of specified mandatory retirement provisions or general age discrimination laws. Many states have allowed exemptions similar to those found within the Federal law. It should be noted that the supremacy clause of the Constitution, article 6, clause 2, has been interpreted to allow Federal preemption when state mandatory retirement laws conflict with the 1978 amendments to the Federal age discrimination law.

A report titled "The Status of State Mandatory Retirement Laws," written by Sharon Lawrence of the National Conference of State Legislatures (NCSL) in December 1985, provides insight on the degree to which states have acted to end mandatory retirement. It is apparent that virtually all states ban mandatory retirement through age 70 for at least one class of workers (i.e., state government, local government, private sector). In fact, thirteen states exceed Federal standards by eliminating forced retirement at any age. These states include: California, Florida, Georgia, Hawaii, Iowa, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New York, Tennessee, and Wisconsin. All of these states except Georgia, Iowa and Tennessee apply their ban on all classes of employees -- state government, local government and private sector employees.

According to the NCSL report, another thirteen states have enacted prohibitions against age discrimination for at least one of the employee groups. These states include: Alaska, Arizona, Arkansas, Connecticut, Delaware, Maryland, Michigan, Nevada, New Mexico, North Carolina, North Dakota, Ohio, and Vermont. Unfortunately, these statutes do not provide a clear-cut ban on mandatory retirement. The laws refer to no age ceiling, however, and could be interpreted as eliminating mandatory retirement for any age. Six of the states in this category cover a ban on all classes of employees: Alaska, Nevada, New Mexico, North Carolina, North Dakota and Vermont.

Seventeen states parallel Federal law by banning age discrimination until an individual reaches the age of 70, and one state (West Virginia) ends its age discrimination at age 65. Interestingly enough, 14 states still retain the authority to require their own employees and some local government employees to retire at age 70. The level of flexibility with regard to application of these laws varies from state to state. For example, year-to-year extensions, some allowed for several years up to another specified age, are common practice. There are six states with no exceptions to their age 70 retirement policy, and two states (Indiana and Wyoming) that call for retirement prior to age 70, 60, and 65 respectively. In Iowa and Missouri, local government employees are subject to local decisions regarding mandatory retirement.

The attached Chart 1 lists each state and its status with regard to mandatory retirement and age discrimination laws as of December 1985.

V. CONCLUSION

Eliminating mandatory retirement will signal our recognition of the value of older workers in the workplace and our intention to eliminate all barriers to their full participation. As we make progress in knocking down barriers, we must vigorously guard against proposals that would weaken the enforcement mechanisms of the ADEA and which would seriously erode its protections and undermine its purposes. Other barriers, such as the negative attitudes of some employers toward older workers, are not easily legislated away. We need to educate employers to see older persons as the valuable resources that they are and to encourage them to develop second career and retraining programs, job sharing, and part-time and flexitime work schedules.

Chart I

Mandatory Retirement/Age Discrimination Laws
Affecting State Government Employees

State	Mandatory Retirement Banned	Age Discrimination Banned (no age limit)	Age Discrimination Banned (age 70 limit)	Mandatory Retirement (various ages)	No Law
Alabama				X	
Alaska		X			
Arizona				X	
Arkansas				X	
California	X				
Colorado				X	
Connecticut				X	
Delaware				X	
Florida	X				
Georgia	X				
Hawaii	X				
Idaho			X		
Illinois			X		
Indiana				X	
Iowa	X				
Kansas				X	
Kentucky			X		
Louisiana				X	
Maine	X				
Maryland				X	
Massachusetts	X				
Michigan				X	
Minnesota			X		
Mississippi				X	
Missouri				X	
Montana	X				
Nebraska				X	
Nevada		X			
New Hampshire	X				
New Jersey	X				
New Mexico		X			
New York	X				
North Carolina		X			
North Dakota		X			
Ohio				X	
Oklahoma				X	
Oregon				X	
Pennsylvania			X		
Rhode Island				X	
South Carolina				X	
South Dakota				X	
Tennessee	X				

State	Mandatory Retirement Banned	Age Discrimination Banned (no age limit)	Age Discrimination Banned (age 70 limit)	Mandatory Retirement (various ages)	No Law
Texas			X		
Utah			X		
Vermont		X			
Virginia				X	
Washington			X		
West Virginia			X		
Wisconsin	X				
Wyoming				X	
Total	13	6	9	22	--

Chart prepared by the
National Conference of State Legislatures

Item 2

JOHN KENNETH GALBRAITH
HARVARD UNIVERSITY
CAMBRIDGE, MASSACHUSETTS

June 4, 1986

Senator John Heinz
United States Senate
Chairman
Special Committee on Aging
Washington, DC 20510

Dear Senator Heinz,

I very much applaud your initiative. It is high time that the question of retirement was based on the individual case rather than on broad formulae that exempt administrative officials from the need for discussion and negotiation. Unfortunately, however, I simply can't be with you on June 19th. I've had to set that time aside for some urgent book deadlines. I am truly sorry. If I can be helpful in any other fashion, do let me know. Meanwhile, I am enclosing a piece which I wrote on this subject some months ago.

Yours faithfully,

John Kenneth Galbraith

JKG:ath

Enclosure -- "Work, Retirement and Aging: The Distant Prospect"

WORK, RETIREMENT AND AGING: THE DISTANT PROSPECT

John Kenneth Galbraith

There are some notable advantages in any adventure into long-range forecasting, and, it must be said, these have been rather fully exploited in our time. Given an elapse of twenty-five years before the forecasted result, there is an excellent chance that the forecaster will be safely dead. So also those ill-motivated people who might hold his errors against him. John Maynard Keynes, reacting to the escapist instincts of economists that cause them to speak of what will happen in the long run, observed acidly but with undoubted truth that "In the long run we are all dead." Given these advantages of the forecaster, all long-range prediction should be regarded with distinct reserve. All who describe themselves professionally as futurists should be thought engaged in a not terribly demanding form of fraud.

However, there are some predictions that can be offered with modest confidence; these are predictions detailing what has already happened or is now happening but which has not yet been recognized. What exists will quite likely continue. The opportunity for such forecast, if such it may be called, exists in more than modest degree as regards age, work and retirement. Always assuming that our compulsive warriors and weapons-builders allow us a future, there is

more than a possibility that it will be a projection of the widely unrecognized present.

This last begins with the modern nature of work. There is no word in the English language that covers more disparate, indeed more radically opposing, circumstances. For some, indeed many, work is heavy, tedious, muscularly debilitating and mentally boring. Prison sentences have anciently been to "hard labor." Work is a form of punishment. But not for all. For others work, even more than sex, is the most fulfilling of enjoyments. We use the same word to denote pain and pleasure, an incredible span. It characterizes an activity that would not be pursued except for the compensation; it disguises a sense of guilt that one should be paid for what one deeply wants to do. My Harvard colleagues have told me with appalling regularity over the years how hard they work. All, without exception, would be utterly dismayed were the alternative to be idle or, God forbid, to be engaged in any kind of manual toil. All, when at last and reluctantly they retire, say with unconvincing pride that "I'm really busier now than ever." Not to be working is an unimaginable horror.

I am required to say that I am no exception. As I have elsewhere told, I was born and brought up on an Ontario farm. It was a working farm, no others

being known in that culture. We were put to work in our early years doing chores, following a team and harrow, helping coil hay, removing the winter's accumulation of manure from the barnyard. I disliked every minute of it; after sixty years I still look back on that labor with total distaste. Every day since, I have cherished my escape across the great divide that separates real work from what is called work.

As there is a separation between work and what, so graciously, is called work, there is also a broad movement in our time from real work to enjoyed work. The manual farm workforce, once huge and given to incomparably tedious toil, has been reduced to the residual migrant and Mexican cadres. The urban labor requirements of the mass-production industries are in an even better-publicized decline. The machines and now the robots have moved in. The great modern expansion is in the public and corporate bureaucracies, the health and service industries, the professions and (least noticed of all) in the design, entertainment, artistic and artistically-based industries. With, to be sure, numerous exceptions, the expansion is in employments where work is a much better-rewarded alternative to a much more painful idleness.

The matters just identified -- the difference between work and real work and the expansion of the former -- exist and, we may assume, will continue. And,

continuing, they will become increasingly visible. There will, in consequence, be an increasingly visible division as between those who retire to escape a physically or mentally debilitating effort and those for whom retirement is an unwelcome divorce from what gives life interest and meaning. The plausible social and political response, reinforced by the great increase in the number of older voters, will be a dual policy on retirement. Those who do real, unwelcome or painful work will continue to retire and enjoy leisure or some more grateful occupation. One might hope that they will be able to do so at an earlier age than now. Retirement for those who really work is a good and agreeable thing and should come at the earliest possible age.

The prospect for those for whom the word work is a form of public and self-deception is very different. Perhaps, at advanced ages, there will be some shift in employments. Older business executives and public officials will be released from the more demanding administrative tasks; they will continue as advisers, consultants, public information specialists and whatever. All bureaucracies, public and private, have a near-plethora of such posts. Artists of all kinds are now known to be largely immune to the influences of age; like orchestra conductors, they continue into their nineties. Journalists and writers

also continue with only modestly diminished competence except as they succumb, in the American tradition, to the more exigent demands of alcohol. Perhaps there is an age when surgeons should cease to operate; there is none at which they cannot contribute usefully to lesser therapy or hospital routine. Professors are, on occasion, stricken with senile decay, but, it has long been noticed, this is extensively unrelated to age. (Some of the most damaging manifestations appear in the years immediately after achieving tenure.) The same is true of a wide range of scientific, technical, professional and white-collar, service and self-employments. The notion of a fixed retirement age for nonwork employments, as no doubt they should be called, is barbaric. It selects the old for the denial of lifelong enjoyments. And, a less important matter perhaps, it denies society the benefit of much useful effort.

I began by observing that if something has already happened, one can have some confidence in turning it into a prediction. Not only is the difference in what constitutes work already visible to all who would look for it but so, of course, are our attitudes toward retirement. In these last years we have greatly modified the rules as regards compulsory retirement; the age has been raised generally and in important areas of public interest prohibited. This has been

done in the name of outlawing discrimination against the old. The deeper reality has been the protection of the nonwork worker in his or her established enjoyments. If the issue had been mandatory retirement for real-work workers, there would have been no complaint. In their case retirement rightly approaches being a human right.

I come to my prediction. In the years ahead -- I waver when pressed to a specific number -- we will have an overtly bimodal view of retirement. It will remain a good thing for the diminishing number of people who do real work. For the growing numbers who like what they do, it will come only with physical or unduly obtrusive mental disability. Because the old will keep on working in the expanding range of occupations where work is enjoyed, the vision so much celebrated in our time of an age-heavy society will fade. We will not have a diminishing number of the young supporting a growing proportion of the old. Instead, a greatly increased proportion of the old will be enjoying themselves in occupations that are at least partly indifferent to age and from which, in consequence, the concept of retirement will have become quite obsolete. They will not be a burden on the young; they will help sustain those of the old who, mercifully, have been relieved from the real work. Diminished if not quite gone will be the colonies

of the frustrated idle in Florida, the myriad elsewhere in the Republic, who, having been expelled from the world that they enjoyed, are reduced to repeating that self-serving line about never having been as busy as now.

Item 3

John Houseman.

June 6, 1986

Senator John Heinz
United States Senate
Special Committee on Aging
Washington DC 20510

Dear Senator Heinz:

Somewhat belatedly I have received your invitation to testify before your Senate Committee on Aging. Unfortunately, on that date I shall be occupied with an engagement that I cannot possibly cancel or change. For that reason I shall not be able to attend the hearing. However, for what value it may have, I hope this letter may be taken as an expression of my very strong feeling on the matter of premature retirement.

Fortunately, in my profession, age does not play a direct part in disqualifying persons of advanced age. However, in many activities in which I've participated, including academic, the disqualifications of age have long deprived students of the experience and expertise that can only be acquired with years.

Please make any use you wish of this letter and, once again, my regrets over my inability to be present at the hearing.

Sincerely Yours,

John Houseman.

John Houseman
51 Malibu Colony Dr.
Malibu Ca 90265

Item 4

STATEMENT BY

T. FRANKLIN WILLIAMS, M.D.
DIRECTOR

NATIONAL INSTITUTE ON AGING
NATIONAL INSTITUTES OF HEALTH
PUBLIC HEALTH SERVICE
DEPARTMENT OF HEALTH AND HUMAN SERVICES

BEFORE THE

U. S. SENATE SPECIAL COMMITTEE ON AGING

JUNE 19, 1986

Mr. Chairman and Members of the Committee, I am Dr. T. Franklin Williams, Director of the National Institute on Aging (NIA). I thank you for the opportunity to present information relating to mandatory retirement. My remarks will present information concerning the medical and scientific evidence relevant to this issue.

Recent advances in medical technology and in scientific research on aging provide us with considerably more knowledge and understanding about health and effective functioning in later years -- into the 70s and 80s -- than we had even a few years ago. Such new research demonstrates that, in the absence of disease conditions, functioning in the various organ systems can be maintained at high levels into these later years. Let me cite selected specific evidence.

First, in terms of the function of the heart, Dr. Edward Lakatta and his colleagues at the Gerontology Research Center of the NIA and at Johns Hopkins Hospital have reevaluated cardiac function in healthy volunteers enrolled in the Baltimore Longitudinal Study of Aging (BLSA), which has now been in progress 28 years. In this reevaluation they have used stress tolerance tests to look for evidence for coronary heart disease (similar to tests used regularly by cardiologists); in addition to monitoring electrocardiographic changes, they have also obtained thallium scans during the exercise tolerance test. These scans are a new medical technology in which a small amount of radioactive thallium

is administered to the subject, who then takes an exercise tolerance test. At the end of the tolerance test, a radionuclide scan of the subject's chest and heart is obtained. The scan shows the distribution of the tracer amount of thallium to the heart muscle and has been demonstrated to be a good indicator of the extent of blood flow to all parts of the heart under the stimulated conditions of the exercise tolerance test. Any areas on the scan which suggest poor uptake of thallium are considered to indicate areas where there is poor circulation to that part of the heart muscle, i.e., evidence for coronary artery disease.

In their study of healthy volunteers, spanning the ages from their 20s up into their 80s, Dr. Lakatta and his colleagues found that about 50 percent of the subjects in their 70s and 80s had some evidence for coronary artery disease, as indicated either by changes in the electrocardiogram or by areas of poor uptake of the thallium on the scans. In the remaining 50 percent, they found that the cardiac (heart) output achieved on the exercise tolerance test was in exactly the same range as in the younger subjects, from age 20 on up. That is, in the absence of evidence for coronary artery disease, there was no evidence for any decline with age in cardiac (heart) function, either at rest or during the standard exercise tolerance test. This research was reported in the highly regarded cardiological journal, Circulation, in February 1984, and has also been discussed by Dr. Lakatta in a paper on "Health, Disease and Cardiovascular Aging" in America's Aging: Health in an

Older Society, recently published by the National Academy of Sciences. In further follow-up studies, Dr. Lakatta and his colleagues have found that this type of approach provides predictive information about the future likelihood of any episodes of acute heart disease such as heart attacks (myocardial infarction) or angina. The following table summarizes their unpublished data on four-year follow-ups of subjects, separated into those who had neither electrocardiographic nor thallium scan abnormalities on the exercise tolerance test, those who had abnormalities in one or the other of these two tests, and those who had abnormalities on both. As can be seen, the likelihood of a coronary event in the next four years was very low among subjects (including those age 70 and older) who had no abnormality on the electrocardiogram or thallium scan. The risk for such an event was 12 times higher among those who had abnormalities in both tests.

Test Results (+ = abnormal)		Number tested*	Number with coronary event in next 4 years	Percent	Average age-years
ECG	Thallium				
+	+	17	7	41.2	70
+	-	31	4	12.9	65
-	+	32	2	6.2	60
-	-	300	6	2.0	59**

*These persons are a part of the Baltimore Longitudinal Study of Aging of the National Institute on Aging.

**Of the 300 with double-negative tests, approximately 100 are aged 70 and older.

These results need further confirmation in more extensive numbers of people and for longer periods of time. However, these early results indicate that not only present but future cardiac functional status can be determined and predicted, and that in many

people in their 70s and 80s cardiac function is and will be maintained in the same range as in younger people.

A second essential organ for maintenance of health and mental functioning is the brain. In earlier studies of performance on intelligence tests, using cross-sectional samples, the data suggested that there is an overall decline in mental functioning with age. However, in the now classical study by Dr. Warner Schaie and colleagues (the Seattle Longitudinal Study) reported in their book, Longitudinal Studies of Adult Psychological Development, published in 1983, it was found that when researchers followed the same subject over time and used each person as his or her own control, in nearly 80 percent of the subjects there was little or no decline at least as far as age 80 (the furthest these studies have extended). There was a slight decline on average in performance of what is called "fluid" intelligence, i.e., the ability to acquire and use new knowledge; but on the average there was a continuing increase with age in performance of "crystallized" intelligence, i.e., the ability to use previously acquired information. It is important to note that, in these tests as in all others, there is considerable variation between individuals at all ages, with a trend toward more variation in older ages. This fact emphasizes the importance of considering each person as an individual in determining his or her capabilities for any role in life at any age.

Further evidence about preservation of brain function has been provided through the studies of Dr. Stanley Rapoport and his colleagues in the Laboratory of Neurosciences of NIA in the Warren G. Magnuson Clinical Center at the National Institutes of Health in Bethesda. They have used the new medical technology of positron emission tomography (PET) to measure glucose (sugar) metabolism in healthy adults of all ages. Glucose is the main source of energy for brain function, and its metabolism is a good measure of brain function. In these studies there is no evidence for any decline in brain metabolism, again at least up into the 80s. Their work has been summarized, among other places, in an article by Creasey, H., Rapoport, S. I., "The Aging Brain," Annals of Neurology, in 1985.

Another example of new evidence relates to the kidney. A recent summary of longitudinal studies on kidney function in the healthy volunteers in the Baltimore Longitudinal Study of Aging, again with the important inclusion of the subject as his own control over time, indicates that there is no decline in kidney function with age in approximately 35 percent of the subjects. The remaining 65 percent show variable degrees of decline. It is not clear why some older people show declines in kidney function over time and others do not -- there was no clear evidence for kidney disease in any of these subjects. But the important point in the current discussion is that individuals can maintain effective kidney function into very late years. It is essential to consider the health status of each individual rather than to make arbitrary assumptions about

changes with age alone. This work was published, by Dr. Lindeman and colleagues in the Journal of the American Geriatrics Society, in May 1985.

Not only may function be well maintained into late years, it can also improve with use or exercise. Recent studies by Dr. James Holloszy and associates at the Washington University School of Medicine have shown that, in a group of generally healthy people aged 60 to 90, previously sedentary, who volunteered to enroll in a typical fitness program, improvement over the next year was very similar to the improvement found in younger people who enroll in such fitness programs. Their maximum aerobic capacity increased an average of 38 percent, and there was improvement in their blood lipoproteins, the fats in the blood which are related to heart disease, and also in their handling of glucose, which is manifested by a decline in any tendency toward diabetes. Thus, function may not only be maintained but may likely be improvable in later years. This work is reported in a paper by Dr. D. R. Seals and others in the Journal of Applied Physiology, in 1984.

Finally, in studies of personality traits at the Baltimore Longitudinal Study of Aging, conducted by Drs. Robert McCrae and Paul Costa, it has been found that personality characteristics are remarkably stable and unchanged over a given person's lifespan. This is presented in their book, Emerging Lives, Enduring Dispositions, published in 1984.

I do not want to leave the impression that there are no changes with aging, or that we begin to know all that one would like to know in this field. Some organ systems, such as the lungs, have not been as carefully reevaluated in longitudinal studies, using the latest medical technologies, as has been done in the heart, for example. In addition, we do know that with aging there are changes in the structure of connective tissues and in responses of organs to hormones, which at least up to the present we cannot attribute to disease. We are just beginning to learn about genetic changes with aging and the roles of genes in determining or favoring the development of diseases in later years, through the application of the remarkable new technologies of molecular genetics.

We also must keep in mind that many older people acquire chronic diseases which limit their functional capacities. Over the age of 65, approximately 45 percent of people report some degree of arthritis. I have already indicated that in the older subjects studied by Dr. Lakatta approximately half had some evidence of coronary artery disease on the stress tolerance test; and other conditions such as decline in vision and hearing, and the development of diabetes and hypertension, are common. These and other conditions can all also begin and be present well before the age of 65 or 70, and must obviously be taken into consideration in determining the functional capacity of any individual, in relation to whatever job or role in life is being considered by or for that individual.

In summary, recent research confirms what has been concluded from earlier studies, namely, that there is no convincing medical evidence to support a specific age for mandatory retirement in all cases.

I will be pleased to answer any questions which the Committee may have. Thank you.

Item 5

STATEMENT OF BURTON D. FRETZ

EXECUTIVE DIRECTOR, NATIONAL SENIOR CITIZENS LAW CENTER

before the

SPECIAL COMMITTEE ON AGING, UNITED STATES SENATE

June 19, 1986

Mr. Chairman and members of the Committee:

I am pleased to have this opportunity to respond to the Committee's request for comments. We understand that a key consideration before this Committee is the proposed elimination of the age 70 cap currently set out in §12 of the Age Discrimination in Employment Act, 29 U.S.C. 631(a).

The National Senior Citizens Law Center is a national support center which specializes in providing legal advocacy and specialized support on legal problems of the elderly poor. The Center provides support services to legal services attorneys, private attorneys rendering pro bono services to low-income seniors, and to representatives of older clients under the Older Americans Act. Center staff responds daily to requests from attorneys across the country for advice, technical assistance and co-counsel. These requests include the area of age discrimination and mandatory retirement. In this context we are happy to address current proposals under the ADEA.

Elimination of the mandatory retirement age and other forms of discrimination against non-Federal workers above the age of 70 would close a small but important gap in the nation's civil rights laws. Just as federal law prohibits discrimination based on race, sex, or religious preference, the law must fully prohibit discrimination based on age. Individuals of all ages are entitled to treatment according to their own worth, free of untrue stereotypes and free from blanket mistreatment based solely on the year of their birth.

The Committee is invited to consider three points in its deliberations: First, removing the age cap under the ADEA primarily will help low-income older workers. Second, this change in the law will mirror the law already in place in 13 states, and the law for Federal workers, all of which have operated satisfactorily. Third, this important civil rights advancement will not seriously affect employer interests.

(1) Persons seeking to work past the age of 70 primarily do so out of financial necessity. This Committee has noted how people aged 65 through 69 receive 28 percent of their income from earnings.* It is this group of people whose lack of social security retirement credits, pension or other resources forces them to continue to seek work as long as physically able to do so, and who will benefit most from removal of the age 70 cap in the current law.

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*Developments in Aging, Rept. 99-242 Vol.3, February 28, 1986, p. 45.

A 1983 survey by the American Association of Retired Persons found that among those who have retired, 63% said they were glad they retired. However, this view changes drastically at different income levels. Among those with least income (under $4,000) two-thirds wished they were still working. At higher income levels, people expressed satisfaction with retirement.

Again and again we see examples of low income seniors who are ready, willing and able to work but are denied the fair opportunity to do so.

-- In the past three years, one school district in northern Alabama mandatorily retired three black janitors who reached the age of 70 under the school district's uniform retirement policy. The district provided ample pensions for teachers and administrators, but provided no such retirement benefits for custodial staff. The three janitors wished to continue working.

-- A maid at a large hotel in Phoenix, Arizona, was fired from her position of a dozen years on reaching the age of 71. She had uniformly positive performance ratings up to the time of her firing. Lacking any retirement income or resources, she fell back on Supplemental Security Income.

-- In South Bend, Indiana, a school cafeteria worker was mandatorily retired under the school's policy when she reached the age of 70. Despite her immense popularity among students, and the personal appeal of several parents before the school board, she was not permitted to continue working. She had no other income.

For those persons who desire to work past the age of 70, unemployment creates serious economic and emotional problems. Such persons who lose their jobs stay unemployed longer than younger workers, suffer a greater earnings loss, and are more likely to give up looking for another job than are younger persons.

(2) Eliminating the age cap works in fact. Thirteen states have laws prohibiting mandatory retirement with no upper age limit.* The experience of these states demonstrates conclusively that lifting the cap under the ADEA will bring helpful results without causing a torrent of new charges.

California, for example, has a state law prohibiting discrimination in employment on the basis of age with no age limit. In 1984, the California State Department of Fair Employment and Housing reported a total of 1,396 charges of age discrimination in employment. Of these, only 28 cases, or 2%, were filed by persons over the age of 69. Of these 28 charges, 21 involved termination, only 3 involved refusal to hire, and 4 involved other charges.

Florida law similarly prohibits age discrimination without imposing an age limit for persons protected. In FY 1985 the Florida Commission on Human Relations received 756 inquiries

*California, Florida, Georgia, Hawaii, Iowa, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New York, Tennessee and Wisconsin.

regarding age discrimination from persons over the age of 40. Of these inquiries, 80 came from persons age 70 or above. These represent mere public inquiries. Of actual charges closed in the most recent quarter, only 2 charges involved persons over age 70.

Moreover, since 1978 Federal agencies have been prohibited from discriminating in employment matters against all persons above 40, with no upper age limit. Yet the number of actions brought against the Federal government by persons over 70 has been negligible.

Eliminating discrimination against persons over 70 is important, yet this result clearly will not open up the floodgates of claims.

(3) Mandatory retirement policies are not needed by small businesses, and serve only the convenience of personnel offices in the largest corporations. Mandatory retirement policies serve administrative convenience only slightly and business necessity not at all. Small businesses do not need and do not use mandatory retirement, by and large. The bigger the company, the more likely it will have a mandatory retirement policy. Only 7% of companies with fewer than 50 employees have a mandatory retirement age. Approximately 60% of firms with 500 or more employees have mandatory retirement, and 79% of companies with 25,000 or more employees have mandatory retirement. These figures were confirmed in 1981 by Portland State University and a 1984 survey by the Conference Board, a management research organization, detailed in the Department of Labor's Interim Report to Congress on Age Discrimination in Employment Act studies (1981).

An occasional voice from the corporate business community objects to any change of the ADEA cap at age 70 on the ground that such a change would hamper management from predicting and filling vacancies which now arise under mandatory retirement plans. The proposed change, however, in no way prevents management from inquiring about an employee's retirement plans in advance and tailoring its personnel policy accordingly. Also, the overwhelming number of employees plan to retire between the ages of 62 and 68, according to the 1981 Department of Labor Report.

Another objection is that employees will be inconvenienced in planning their own retirement if mandatory retirement plans are eliminated. While such concern for employees' welfare is commendable, it is no basis for blanket and arbitrary discrimination against those same employees.

To deny any people the opportunity to compete fairly in the work place flies in the face of the work ethic and common sense. To allow a company to prevent persons over the age of 70 who are otherwise qualified from working because of an arbitrary policy based on custom, outdated stereotypes, or the convenience of a personnel office, remains unfair and unnecessary.

Ending employment discrimination based solely on arbitrary age limits is an important step in achieving the full civil rights of older Americans. It is equally important in allowing financially strapped older workers to seek economic security.

We thank the Committee for considering these views.

Item 6

AGE AND YOUTH IN ACTION

GRAY PANTHERS

PROJECT FUND

TESTIMONY
BY
MAGGIE KUHN

FOUNDER AND NATIONAL CONVENER
GRAY PANTHERS

BEFORE THE U.S. SENATE SPECIAL COMMITTEE ON AGING
WASHINGTON, D.C.

JUNE 19, 1986

NATIONAL GRAY PANTHERS / Washington, D.C. Office:
806 15th Street, N.W. • Suite 430 • Washington, D.C. 20005 • (202) 783-6226

Gray Panthers commend the Senate Special Committee on Aging for scheduling the hearings on retirement policy and enlarging public awareness and Congressional response to work and retirement issues.

Gray Panthers are a national organization bringing together old people and young people to work for social justice through the elimination of ageism, sexism and racism.

Since our founding in 1970, our organization has vigorously opposed mandatory retirement as a waste of skills and experience which our society cannot afford. Our analysis deems mandatory retirement detrimental to the health of society and hazardous to the personal health and self esteem of American workers. Our position is that retirement should be optional, flexible, never mandatory.

We are living today in the midst of two world-wide revolutions: (1) the demographic revolution in which more people are living longer than ever in recorded history; (2) the technological revolution, which has brought sweeping changes in the structure and nature of work.

Technological change, linked with corporate mergers, plant closings, the roboting of work, and the movement of U.S. industry to the third world has caused the displacement of millions of older workers, and made their skills obsolescent.

Despite statutes prohibiting mandatory retirement, many older workers have little real protection from forced early retirement. Furthermore,

older workers are not only pushed out of their jobs, but even in their fifties are frequently downgraded in the quality of work assigned to them with minimal job security or benefits. According to a 1985 study by the U.S. Census Bureau only 24% of Americans over 65 were in the workforce in 1983 compared with 41% in 1960. While the elderly population has increased by 9 million in this period the number of older persons in the workforce has decreased by 564,000.

We recognize that more than half of American workers dislike their jobs and look forward to retirement as a needed release. We understand the need for job options and opportunities for changing employment for workers employed in hazardous jobs that menace health and well-being.

Technological and demographic changes have created severe economic dislocation and raised critical ethical and social issues throughout the United States and the world community about the future of work and the worker. Arbitrary age, sex, and race discrimination impose heavy burdens on older and younger workers. Access to training for older displaced workers as well as younger workers, and access to creative and meaningful work are critical issues for the whole society to face and resolve. In our view, the resolution of the crisis of work is a test of the viability and survival of our democratic society and its institutions.

Gray Panthers are participating in a national Project on Work directed by the Center for Ethics and Social Policy at Temple University in Philadelphia. The project includes a six month period of planning, consultation with business, industry and labor, and a response from selected Gray Panther

chapters. The second phase of the project involves a two to three year period of experimentation and development of new kinds of work that use the skills of older and younger workers, economic development models for local communities that affirm non-discriminatory employment, adequate and equitable salary and benefits, and adoption of supportive public policies.

In this period, new structures in the workplace will be tested for the two groups of workers most at risk--the older worker and younger worker--leading to

1. Ways to restructure the workplace,
2. Models for new ways of work, and
3. Appropriate legislation and supportive public policy.

In summary, Gray Panthers oppose all forms of age discrimination including mandatory retirement at any age. We strongly support your review of our nation's retirement policies and will continue to work with the Senate Special Committee on Aging to achieve justice in the workplace.

Thank you.

Item 7

American Psychological Association

From the APA Journals

FOR RELEASE: Immediately

CONTACT: Don White
Public Information Office
(202) 955-7710

JOB PERFORMANCE DOES NOT DECLINE WITH AGE, NEW STUDY FINDS

Contrary to popular belief, older workers can be just as productive as their younger counterparts. In fact, for many workers, job performance actually improves with age.

That's the conclusion of a new study published in the Journal of Applied Psychology (February).

Psychologists David A. Waldman, Ph.D., and Bruce J. Avolio, Ph.D., of the State University of New York, analyzed previous research on the relationship between age and job performance. Their review of 13 studies, conducted between 1940 and 1983, revealed little support for "the somewhat widespread belief that job performance declines with age," they report. On the contrary, many of their results "pointed to performance increments with increasing age."

Drs. Waldman and Avolio found that assessments of older workers' abilities varied depending on the type of measure that was used by the researchers. For example, when productivity was measured objectively, performance was found to increase as employees grew older. However, when performance was judged by supervisors' ratings--a more subjective measure--a small decline was found with increasing age.

According to Drs. Waldman and Avolio, objective measures of individual productivity may be a "fairer representation of performance, whereas supervisory ratings may reflect a tendency on the part of raters to bias their appraisals, resulting in lower ratings for older workers."

The study also found that older professionals were more likely to be judged highly by their supervisors and co-workers than were older non-professionals.

more

1200 Seventeenth St. N.W.
Washington, D.C. 20036
(202) 955-7710

In view of their findings, Drs. Waldman and Avolio conclude that "although chronological age may be a convenient means for estimating performance potential, it falls short in accounting for the wide range of individual differences in job performance for people at various ages."

Instead of automatically ruling out an older worker for a given job, employers should carefully examine the specific mental and physical requirements of the position, the researchers say. They note that their findings suggest "the possibility that older workers who take on new and/or more challenging roles may be able to maintain (or improve) performance levels across the life span.

"The older worker who may appear to be dull as compared with a younger, more enthusiastic worker may have become so due to years of accumulated boredom. Offering older workers renewed stimulation at key points in their careers may help to maintain high levels of productivity."

"Personnel policies that discriminate against older workers should be carefully examined, not only for legal or ethical reasons, but also because of an organization's need to effectively use (its) personnel," write Drs. Waldman and Avolio. "The arbitrary use of younger age as an employment criterion would unavoidably discriminate unfairly against an older worker whose capacity remains high."

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EDITORS: A full text of the article, "A Meta-Analysis of Age Differences in Job Performance," is available from the APA Public Information Office.

Item 8

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

JUL 7 1986

The Honorable John Heinz
Chairman, Special Committee
on Aging
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in further response to your inquiry of May 16 requesting an estimate of certain costs associated with a proposal to remove the age 70 limit from the Age Discrimination in Employment Act (ADEA). In particular, you asked for estimates of potential savings to the Social Security Old-Age and Survivors Insurance (OASI) and Disability Insurance (DI) Trust Funds and the Medicare Hospital Insurance (HI) Trust Fund as a result of requiring that employers eliminate all mandatory retirement age provisions and requiring that private pensions continue to offer benefit accruals for work after normal retirement age.

Savings to the OASI, DI and HI Trust Funds would occur as a result of these provisions to the extent that total covered employment is increased. Replacing one group of workers with another would not result in any significant trust fund savings. But, an expansion of covered employment should generate additional Social Security and Medicare tax revenues. Such additional revenues are expected to be very small initially, rising to at most $25 million per year for 1991. After 1991, the amount of additional tax revenues is expected to increase further as workers adjust their retirement plans and employers have the opportunity to adjust to the resulting increase in the labor supply. By 2020, the increase in the total of OASDI and HI tax revenues is expected to reach about $100 million in 1986 dollars (indexed by expected increases in average wages). For the long-range period (1986-2060), the actuarial balance for the OASDI and HI programs combined is expected to improve by 0.01 percent of taxable payroll.

It should be emphasized that these estimates are subject to a great deal of uncertainty because they depend on behavioral changes which are difficult to anticipate and for which very little data are available. For this reason, we believe that precise estimates for the years 1987 through 2020 would not

Page 2 - The Honorable John Heinz

provide significantly more useful information than the above estimates.

We hope this information is helpful.

Sincerely,

Otis R. Bowen, M.D.
Secretary

Item 9

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

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July 8, 1986

Honorable John Heinz, Chairman
Special Committee on Aging
United States Senate
SD-G33 Office Building
Washington, D.C. 20510

Dear Senator Heinz:

The AFL-CIO appreciates the opportunity to present our views to the Senate Special Committee on Aging on S. 1054, a bill which would amend the Age Discrimination in Employment Act to extend that Act's protections to individuals 70 years and older.

Organized labor has long been aware of the difficulties faced by older workers in finding and remaining at work. Since the accent today is so unmistakeably on youth, advanced age is a severe disability in the labor market. Society has too often attempted to relieve unemployment problems by denying older people the opportunity to work. The burden of unemployment should not be borne by any single group. What is needed are jobs for all who want and need them -- and that means older workers along with everyone else.

There is nothing wrong in laying down the burden after a full measure of work and enjoying leisure in the years that remain. This is, after all, a major reason unions have negotiated pensions. However, just as workers should have the right to choose retirement, they should also have the right to choose to continue working.

Passage of S. 1054 would insure that workers would not be forced to retire solely because of his or her birthdate. Workers should be judged on their abilities and not because they have reached some arbitrary age. Though this legislation will not affect many persons, it would make an enormous difference in the lives of those who otherwise would face age discrimination and mandatory retirement. Labor Department studies show that eliminating mandatory retirement would have no significant negative impact on our nation's work force or employers as a whole nor on the employment of minorities, youth or women.

There are two special problems we wish to bring to your attention. The Age Discrimination Act, in exempting certain "executive" and "high policymaking" positions and college employees with unlimited tenure, recognizes that, as important as the interest in free access to the labor market is, there are situations in which competing interests are of even greater importance. We believe that the language of this exemption should be

amended to make it plain that private organizations may make it a qualification for seeking any elective position with significant policymaking responsibilities that the individual either has not reached age 65 or will not reach that age during his term of office. It is our view that where office holders are selected in a democratic election, the electorate, and not the government, should set the basic eligibility rules.

Second it would be bad labor policy to abrogate provisions of collective bargaining agreements arrived at through good faith bargaining. Therefore, we commend the sponsors of the bill for exempting collective bargaining agreements until their termination dates or January 1, 1979, whichever occurs first.

We commend you and the members of the Senate Special Committee on Aging for the efforts you are making in behalf of this legislation. Please be assured that these efforts are supported by the AFL-CIO

Sincerely,

Robert McGlotten, Director
DEPARTMENT OF LEGISLATION

c: Members of the Special Committee on Aging

Item 10

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

September 5, 1986

The Honorable John Heinz
Chairman
Special Committee on Aging
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Please accept my apology for the delay in responding to your letter of June 30. I am pleased to have this opportunity to reaffirm the Administration's position on age discrimination at age 70 or above.

The President has made his views on age discrimination very clear. As he stated in April, 1982, "When it comes to retirement, the criterion should be fitness for work, not year of birth. . . We know that many individuals have valuable contributions to make well beyond 70 years of age and they should have the opportunity to do so if they desire."

Through the work of your Committee and others who share your concerns, the benefits of eliminating age discrimination are now well documented. We now know that elderly workers can perform with the consistency, judgment, quality of work and attendance that is as good if not better than their younger counterparts. Moreover, as our economy becomes increasingly technologically oriented, the physical demands on employees lessen.

Permitting the elderly to work also can help alleviate the financial hardships they might otherwise face. The elimination of a mandatory retirement age may provide those persons, with inadequate pensions, income that might otherwise have to be provided through government programs.

Finally, the President himself is a superb example of the creative energy that elderly workers can bring to solving our nation's problems. Generally, mandatory retirement is no longer justified. Nevertheless, the Administration does recognize the appropriateness of early retirement for certain categories of federal employees such as law enforcement officers, firefighters and air traffic controllers.

Since the President's April, 1982 statement, the Administration has stated its support of legislation that will end mandatory retirement and eliminate the age 70 "cap" contained in Section 12 of the Age Discrimination in Employment Act for all personnel actions except hiring and promotions. This would include eliminating the age 70 "cap" on adverse personnel actions, such as demotions or salary reductions, which might be undertaken to force retirement. This position is entirely consistent with the President's stated goal of eliminating mandatory retirement.

The Administration does not support broader legislation that would cover all aspects of employment. The Administration believes these aspects would have policy ramifications that have not been adequately considered. Until these issues are better understood, we believe that the Administration's position is the most appropriate policy.

If the Administration's position is enacted by Congress, employees will no longer be forced to retire at an arbitrary age. Individual ability and choice rather than age will determine when an employee retires. The Administration hopes such legislation can be enacted soon.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Very truly yours,

WILLIAM E. BROCK

WEB:rjc

99TH CONGRESS
1ST SESSION

S. 1054

To amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 2 (legislative day, APRIL 15), 1985

Mr. HEINZ (for himself, Mr. GLENN, Mr. CRANSTON, Mr. ANDREWS, Mr. BURDICK, Mr. COHEN, Mr. CHILES, Mr. HUMPHREY, Mr. DIXON, and Mr. PROXMIRE) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

---

A BILL

To amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Age Discrimination in Employment Amendments of 1985".

SEC. 2. Section 12 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631–634) is amended—

(1) in subsection (a) by striking out "but less than 70 years of age", and

(2) in subsection (c)(1) by striking out "but not 70 years of age,".

SEC. 3. The amendments made by section 2 of this Act shall take effect on January 1, 1986, except that with respect to any employee who is subject to a collective bargaining agreement—

(1) which is in effect on March 14, 1985,

(2) which terminates after January 1, 1986,

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)), and

(4) which contains any provision that would be superseded by such amendments, but for the operation of this section,

such amendments shall not apply until the termination of such collective-bargaining agreement or January 1, 1989, whichever occurs first.

O